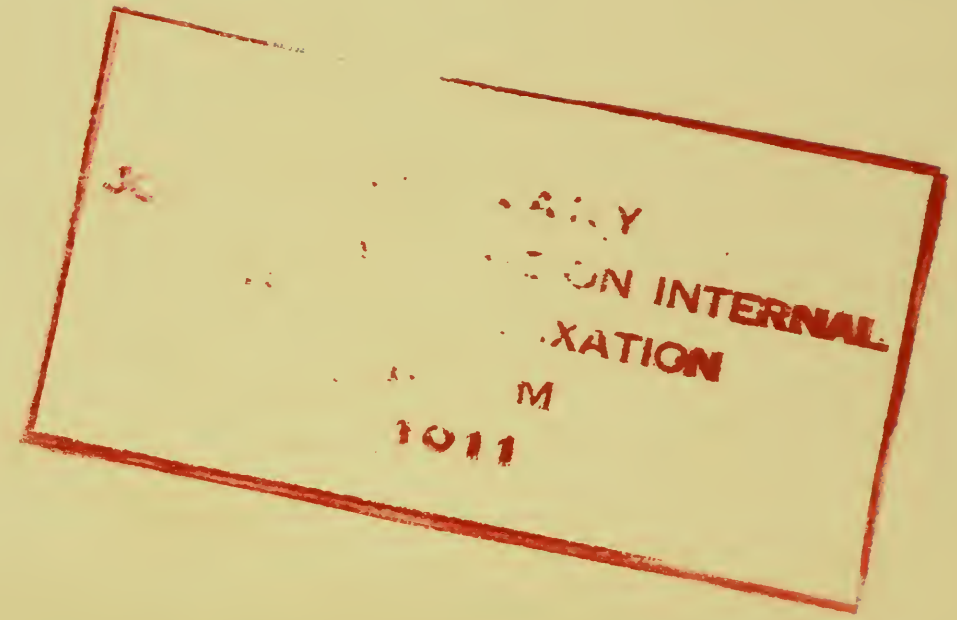
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87th Congress, 2d Session - - - - - House Document No. 322

REPORT ON THE RENEGOTIATION ACT OF 1951

LETTER

FROM

CHAIRMAN, JOINT COMMITTEE ON INTERNAL REVENUE TAXATION

TRANSMITTING

A REPORT BY THE JOINT COMMITTEE ON INTERNAL REVENUE TAXATION DATED JANUARY 31, 1962, CONCERNING THE RENEGOTIATION ACT OF 1951, AS AMENDED, PURSUANT TO PUBLIC LAW 86–89, AS AMENDED BY PUBLIC LAWS 87–4 AND 87–55

JANUARY 31, 1962.—Referred to the Committee on Ways and Means and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

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CONGRESS OF THE UNITED STATES
JOINT COMMITTEE ON INTERNAL REVENUE TAXATION

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LETTER OF TRANSMITTAL

JOINT COMMITTEE ON INTERNAL REVENUE TAXATION,
Washington, D.C., January 31, 1962.

The Speaker of the House of Representatives.

SIR: Pursuant to section 4(b) of Public Law 86–89 (73 Stat.), 211 (1959), as amended by Public Law 87–4 and Public Law 87–55, I have the honor to submit a report by the Joint Committee on Internal Revenue Taxation dated January 31, 1962, concerning the Renegotiation Act of 1951, as amended.

Very respectfully,

HARRY F. BYRD,
Chairman.

REPORT ON THE RENEGOTIATION ACT OF 1951

JANUARY 31, 1962.

Section 4(b) of Public Law 86–89, as amended by Public Laws 87–4 and 87–55, directed the Joint Committee on Internal Revenue Taxation "to make a full and complete study of the Renegotiation Act of 1951, as amended, and of the policies and practices of the Renegotiation Board," and directed the committee to report to the Senate and to the House of Representatives, not later than January 31, 1962, "the results of the study * * * together with such recommendations as it deems necessary or desirable."

Pursuant to this directive, the joint committee caused its staff to make a study of renegotiation and to submit the results thereof. The staff study of renegotiation is attached hereto.

Section 2–B of the attached staff study contains the staff recommendation concerning the Renegotiation Act of 1951. The Joint Committee on Internal Revenue Taxation concurs in, and hereby adopts as its recommendation, the staff recommendation that the Renegotiation Act of 1951 be extended for 2 years, that is, until June 30, 1964. The staff study attached is being submitted for the information of the Congress, and the committee has taken no action thereon (except for adoption of the recommendation just referred to.)

HARRY F. BYRD,
Chairman, Joint Committee on Internal Revenue Taxation.

STAFF STUDY

OF THE

RENEGOTIATION ACT OF 1951

PREPARED BY

THE STAFF OF THE

JOINT COMMITTEE ON INTERNAL REVENUE TAXATION

JANUARY 31, 1962

INTRODUCTION

This document has been prepared by the staff of the Joint Committee on Internal Revenue Taxation to assist the committee in making the report on renegotiation directed by section 4(b) of Public Law 86–89 (73 Stat. 211 (1959)). Section 4(b) directed the committee "to make a full and complete study of the Renegotiation Act of 1951, as amended, and of the policies and practices of the Renegotiation Board", and directed the committee to report to the Senate and the House of Representatives, not later than March 31, 1961, "the results of the study * * * together with such recommendation as it deems necessary or desirable."

Public Law 87–4, approved March 22, 1961, amended section 4(b) to extend the date for submission of the report to June 30, 1961. Public Law 87–55, approved June 21, 1961, further amended section 4(b) to extend the date for submission of the report to January 31, 1962. This latter extension of time for submission of the report was made at the request of the Chairman of the Renegotiation Board for the reasons stated in his letter of May 31, 1961. The letter referred to is set forth in Senate Report No. 362 (87th Cong., 1st sess.), accompanying House Joint Resolution 437.

For purposes of making this study of renegotiation, the staff, during the latter part of 1960 and the first part of 1961, collected materials from, and solicited the views of, contractors, Government agencies concerned, and others interested in renegotiation. On November 23, 1960, the staff issued a press release, calling attention to the study directed by the statute and inviting all interested persons to submit their views in writing. In response to this invitation, the staff received a large number of written statements from contractors, and organizations representing contractors. After receiving these written statements, the staff conducted a series of conferences during the early part of 1961 with representatives of contractors who had submitted written statements.

The staff also directed letters to each of the Government departments named in the act, to the Renegotiation Board, and to other agencies concerned with the act, soliciting their views regarding extension and amendment of the act. In addition, requests for information on various matters arising in connection with the study were submitted to the various Government agencies. Conferences were also held from time to time with representatives of the various Government agencies.

The staff also received information from and held conferences with persons, such as professors, former employees of the Board, etc., who appeared as representatives of neither contractors nor the Government.

The staff also initiated a number of surveys for the collection of data with regard to various matters involved in preparation of the report.

Public Law 86–89, which directed the study of renegotiation, also directed the Senate Armed Services Committee and the House Armed Services Committee "to make full and complete studies of the pro-

curement policies and practices of the Department of Defense, the Department of the Air Force, the Department of the Army and the Department of the Navy." It further provided that "Such studies shall include an examination of the experience of such Departments in the use of various methods of procurement and types of contractual instruments, with particular regard to the effectiveness thereof in achieving reasonable costs, prices, and profits." The law directed each of those committees to report to its House, not later than September 30, 1960, "the results of the study * * * together with such recommendations as it deems necessary or desirable."

The reports on procurement made pursuant to section 4(a) by the House Armed Services Committee and the Senate Armed Services Committee are found in House Report 1959 (86th Cong., 2d sess.) and Senate Report 1900 (86th Cong., 2d sess.). Materials compiled in connection with the study preceding the Senate report on procurement are contained in (1) hearings before the Procurement Subcommittee of the Senate Committee on Armed Services (86th Cong., 2d sess.), part 1 (Feb. 8 and 9, 1960) and part 2 (May 23, 24, and 31, 1960); and (2) hearings on S. 500, S. 1383, and S. 1875 before a subcommittee of the Senate Committee on Armed Services (86th Cong., 1st sess.), July 13–31, 1959. Materials compiled in connection with the study preceding the House report on procurement are contained in "Hearings Pursuant to Section 4 of Public Law 86–89," before a special subcommittee of the House Committee on Armed Services (86th Cong., 2d sess.), April 25–29, May 2–31, and June 1–9, 1960. These reports on procurement, as well as the related materials cited, have been made available to and used by the staff in preparing this study of renegotiation.

The summary and conclusions of the report on procurement of the House Armed Services Committee are set forth below.

Summary and Conclusions

We have indicated our dissatisfaction with negotiated procurement as a policy and practice. We have reviewed some of the pitfalls inherent in the process; and the unnecessary costs resulting from the lack of competition both as to price and product; and we have proposed amendments to the Armed Services Procurement Act in H.R. 12572 to tighten controls over procurement.

We now come to consideration of whether any particular form of contract is more effective in the negotiating process.

We have explained the various types of contracts being used. All but two are used in negotiation.

We come to the firm conclusion that the results of Government contracting, as demonstrated in data and testimony as commented upon by the Comptroller General, raise grave questions as to whether or not the Government is coming out of the "negotiating" process as it should.

We are disturbed by the heavy reliance necessarily placed on "cost estimates" of the Government estimators. We do not attribute the obvious imbalance in results either to lack of effort or good will on the part of the Government negotiators. But their effectiveness as shown in results is open to challenge. It is a reflection on the system in which they are required to perform their duties; and of the limitations upon their opportunities for needed information, rather than on personal intent.

It has been clearly demonstrated that the cost-plus-fixed-fee contract in practice is a "high cost" operation. The disturbing factor is the increasing use of this type of contract.

As to production contracts, of which there are three, the firm-fixed-price contract is not in the largest segment of purchasing; but it is, nevertheless, the tried and proven method; and when backed up by statutory renegotiation, can be a useful price tool, as the evidence before us definitely indicates.

As to the other types of production contracts, (1) the price-redeterminable and (2) the fixed-price-incentive contracts, it would appear to us, that the price redeterminable contract offers probably the soundest and more exact approach to the problem because of its reliance upon audit rather than estimates.

For all of these reasons, we do not believe that any one form of contractual instrument preempts the field of "cost reductions" to the Government nor is one type more effective in producing "reasonable costs, prices, and profits" than any other.

Each depends upon their judicious employment, in given circumstances. The cost-plus-fixed-fee contract and the fixed-price-incentive-type contracts are shrouded in the gravest doubts as to their effectiveness as contractual instruments.

Our conclusion is that wider use of the firm-fixed-price contract and competition both as to source and price, offers the best possibility for cost reductions.

It is for this reason that we reemphasize the importance of using advertised competitive contracting to a greater extent, not only in prime contracting, but in subcontracting to the extent that the Government can influence subcontracting.

Statutory Renegotiation

The hearings and data which we present in this report along with our conclusions and recommendations, fully justify and require the continued application of the principle of statutory renegotiation. The high incidence of negotiated contracting which is dependent, exclusively in some instances, and heavily in others on "estimating" is fraught with dangerous possibilities of "unjust enrichment" at public expense.

What the President pointed out in 1948 has come true through force of many circumstances. There has been a concentration of production facilities in the hands of a relatively small production base in which the Government is heavily interested. This segment of industry, therefore, is the beneficiary of public necessity. Its position in relation to commercial enterprise and private taxpayers in the whole country, who support defense in equal measure demands that their fortuitous circumstances of position and place, shall not, by concentration of contracts produce excessive profits.

Therefore, the Renegotiation Act and the criteria set out in it are, and must remain, an integral part of the way of doing defense business for the foreseeable future. American companies and Americans generally recognize and accept the necessities of this situation as a matter of justice and public conscience.

On the evidence before us and the record assembled, we make the following recommendations:

1. That H.R. 12572 be passed; and
2. That no special consideration or recognition for any particular type or types of contract in the achievement of "reasonable costs, prices and profits" be allowed; and
3. That the fixed-price-incentive type of contract contain the requirements set out in section (g) of H.R. 12572 to make it a more effective instrumentality for the Government; and
4. That the Renegotiation Act of 1951 as amended, be made permanent law.

Dated: June 22, 1960.

Carl Vinson, *Chairman*,
Paul J. Kilday,
L. Mendel Rivers,
Richard E. Lankford,
George Huddleston, Jr.,
Toby Morris,
Leslie C. Arends,
William H. Bates,
William G. Bray,
Frank C. Osmers, Jr.,
Frank J. Becker,

Special Subcommittee on Procurement Practices of the Department of Defense, of the Committee on Armed Services.

The findings and recommendations of the report on procurement of the Senate Armed Services committee are set forth below.

Findings

1. Most, if not all, of the procurement problems in the Department of Defense can be solved administratively.
2. All of the major contract types now in use have appropriate uses if applied in the circumstances in which their use is intended and if skillfully negotiated and administered. All of the major contract types now used can produce undesirable cost, price, or profit consequences if used inappropriately or if they are not carefully negotiated and administered.
3. Indispensable prerequisities for formal advertising frequently do not exist in modern military procurement and, hence, some contracts must be negotiated. (These prerequisities are listed on p. 17 of this report.)
4. Negotiation does not necessarily mean the absence of competition. The extent of the competition that may be obtained under each of the 17 exceptions varies in accordance with the nature of the exception.
5. Procurement law does not retard the availability of advanced weapons systems. However, programing decisions and administration of the laws frequently result in unnecessary delay.
6. The volume of contemporary military procurement is such that authority to procure cannot be unduly centralized and some authority must be delegated.
7. Complexities of contemporary military procurement are such that procurement law cannot be so in flexible as to preclude exercise of judgment by procurement officials. In this area, as in so many areas of government, it is virtually impossible to legislate a requirement that good judgment be used.

Recommendations

I. THE PROCUREMENT REGULATIONS SHOULD BE AMENDED TO STATE AFFIRMATIVELY A PREFERENCE FOR FORMAL ADVERTISING WHENEVER THIS METHOD IS PRACTICABLE

The legislative history of existing procurement law manifests a congressional intent that the military departments use formal advertising in all procurements in which this method could reasonably be expected to give satisfactory results, even though circumstances might exist that would be sufficient to authorize negotiation under 1 or more of the 17 exceptions. Despite this obvious intent, neither the law nor the regulation affirmatively expresses a preference for formal advertising. The committee recommends that the regulations provide for the use of formal advertising in all cases in which this method is practicable, notwithstanding the existence of an exception under which the procurement could be negotiated.

II. THE REGULATION GOVERNING THE USE OF EXCEPTION 14 SHOULD BE REVISED TO MAKE CLEAR THAT USE OF THIS EXCEPTION SHOULD NOT BE FOUNDED ON AVOIDANCE OF DUPLICATION OF PRIVATE INVESTMENT UNLESS THIS DUPLICATION COULD BE SHOWN TO RESULT IN ADDITIONAL COST TO THE GOVERNMENT

Under the caption "Analysis of Procurement Statistics," the use of exception 14 has been explained. This exception cannot be used unless the Secretary determines that its use is for technical or special property that requires a substantial initial investment or an extended period for manufacture and that procurement by formal advertising may require duplication of investment or preparation already made or would unduly delay the procurement of that property.

The bare words of this exception could leave the impression that contracts may be negotiated under it to avoid duplication of private rather than Government investment. The committee believes that avoidance of private investment alone is insufficient to justify use of this exception unless it can be shown that formal advertising is likely to result in additional cost to the Government.

III. THE REGULATION COVERING THE CONDUCT OF NEGOTIATIONS SHOULD BE CHANGED TO EXPAND THE REQUIREMENT FOR DISCUSSIONS WITH OFFERORS UNDER NEGOTIATED PROCUREMENTS

Under the caption "Negotiation Procedure," it has been pointed out that in a negotiated procurement, the procurement regulation now provides that where one offeror submits a proposal that is clearly and substantially more advantageous to the Government, negotiations may be conducted with that offeror only.

The committee recommends that the regulations in this area be modified to require, with certain exceptions, that oral or written discussions be had with all responsible offerors who submit proposals within a competitive range. Excepted from this requirement would be procurements involving not more than $2,500, those in which prices or rates are fixed by law or regulations, those in which time of delivery will not permit such discussions, those involving authorized set-aside programs, and those in which it can be clearly shown that adequate competition or prior-cost experience is likely to produce reasonable prices without such discussions. In the latter exception, the request for proposals should notify all offerors of the possibility that the award may be made without discussion. If discussions are unnecessary in the ordinary case, it is difficult to understand that the procurement could not have been accomplished by formal advertising. At the same time, the committee recognizes that an inflexible requirement for discussions with all offerors could encourage the offerors to pad their initial proposals and not to quote their best prices first.

IV. THE REGULATION ON INCENTIVE CONTRACTS SHOULD BE AMENDED TO REQUIRE A CONTRACTUAL PROVISION PERMITTING ADJUSTMENT OF THE TARGET COST TO EXCLUDE ANY AMOUNTS BY WHICH THE TARGET COST WAS INCREASED BECAUSE OF INACCURATE, INCOMPLETE, OR OUT-OF-DATE COST DATA SUBMITTED BY THE CONTRACTOR

Under the discussion of "Fixed-price incentive contracts," this report has indicated that contracts of this type involve the negotiation of a target cost and a profit formula under which the contractor benefits if he performs the contract for less than the target cost. The report also indicates that if the target cost is unrealistic, the contractor may receive profits under the sharing formula that are not a result of his efficiency but of an inflated target cost. After the General Accounting Office submitted several reports to the Congress on cases in which contractors received unwarranted profits because the cost data used in establishing target cost were inaccurate, incomplete, or out of date, the Department of Defense amended the regulations to require certificates of cost. Willful execution of a false certificate makes the contractor subject to criminal penalties, including imprisonment.

The committee believes that, in addition to this safeguard, the contract itself should contain a provision permitting adjustment to exclude profit consequences based on inaccurate, incomplete, or out-of-date information furnished by the contractor.

V. THE PROCUREMENT REGULATIONS SHOULD BE AMENDED TO REQUIRE MORE SPECIFIC DETERMINATIONS AND FINDINGS

The law now requires certain determinations and findings before negotiation exceptions 11 through 16 may be used, before cost, cost-plus-fixed-fee, or incentive contracts may be used, and before advance payments may be made.

The General Accounting Office informed the committee that its review of these findings and determinations has disclosed that they tend to be brief and stereotyped, and that they do not provide enough information to show the factors upon which the decisions were based. The committee recommends that these determinations be made more explicit and that they set out enough facts and circumstances to justify clearly the determination or finding.

VI. THE REGULATIONS SHOULD BE EXPANDED TO INCLUDE A REQUIREMENT FOR WRITTEN FINDINGS BEFORE CERTAIN OF THE EXCEPTIONS MAY BE USED TO NEGOTIATE CONTRACTS

Exceptions 11 through 16 may not be used until after the Secretary makes the determinations and findings required in those exceptions. The other authorities for negotiating contracts do not depend on any finding.

The committee recommends that the Department make appropriate changes in the regulations to provide that Exceptions 2, 7, 8, 10, and 12 may not be used for negotiating contracts unless there has been a written finding clearly indicating that the use of formal advertising would be impracticable. This requirement should also apply before Exception 11 may be used for negotiating contracts for property or supplies used in connection with research and development.

Some of the 17 exceptions are intended for use in circumstances where it is self-evident that formal advertising is impracticable. In other cases, the existence of an authority to negotiate does not necessarily mean that it is impracticable to procure by formal advertising. This recommendation is intended to apply to those exceptions in which existence of an authority to negotiate is not, in itself, adequate justification for not procuring by formal advertising. This expanded requirement for findings would apply in the following circumstances:

Exception 2 (where the public exigency will not permit the delay incident to advertising);

Exception 7 (where the purchase or contract is for medicine or medical supplies);

Exception 8 (where the purchase or contract is for property for authorized resale;

Exception 10 (where the purchase or contract is for property or services for which it is impracticable to obtain competition);

Exception 11 (where the purchase or contract is for property or services in connection with experimental, developmental, or research work);

Exception 12 (where the purchase or contract is for property or services of a classified nature).

The expanded requirement would apply only to the part of Exception 11 relating to the acquisition of property or supplies.

VII. THE DEPARTMENTS SHOULD CONTINUE THEIR EFFORTS TO DEVELOP ADEQUATE SPECIFICATIONS AND TO USE THOSE THAT HAVE BEEN DEVELOPED IN AN ATTEMPT TO MAKE PRACTICAL MORE PROCUREMENT BY FORMAL ADVERTISING

VIII. THE DEPARTMENTS AND PRIME CONTRACTORS SHOULD CONTINUE EFFORTS TO PUBLICIZE THE PROSPECTIVE AWARDING OF SUBCONTRACTS IN AN ATTEMPT TO SECURE MORE COMPETITION

Prime contracts that may result in awards in excess of $10,000 are, with certain exceptions, published by the Department of Commerce in the "Synopsis of U.S. Government Proposed Procurements, Sales, and Contract Awards." Similar publication of proposed subcontracts may be impractical because of the number of such contracts. The committee expresses the hope, however, that the departments and the contractors may evolve a system that will permit broader notice of proposed subcontracts without imposing an unacceptable delay or burden of paperwork.

IX. THE DEPARTMENTS SHOULD CONTINUE THE EMPHASIS THAT IS BEING PLACED ON THE TRAINING OF PROCUREMENT PERSONNEL

(These recommendations have been forwarded to the Department of Defense with a request that the committee be furnished a report in January of 1961 on the extent to which the recommendations have been implemented. Pending receipt of a report on the extent to which the recommendations for changes in the regulations are implemented, the Committee is making no legislative recommendations at this time.)

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APPENDICES

SECTION 1. OUTLINE AND BRIEF HISTORY OF RENEGOTIATION

A. Outline of Renegotiation

Renegotiation is concerned with problems in the pricing of Government procurements. Specifically, it is a process in which the Government may require a contractor to refund that portion of profits on Government contracts or related subcontracts which it determines to be "excessive."

As it stands under the 1951 act as amended to date, renegotiation is a process in which the Government, acting through an independent establishment called the Renegotiation Board, may require a contractor to refund to the Treasury that portion of profits received or accrued in a fiscal year (or such other period as may be fixed by mutual agreement) on contracts with Government departments named in the act, or on related subcontracts, which are determined by the Board (or redetermined by the Tax Court) to be "excessive."

Under the 1951 act, the renegotiation authority is vested in an independent establishment in the executive branch of the Government, consisting of five members appointed by the President by and with the advice and consent of the Senate. The Secretaries of the Army, Navy, and Air Force (subject to the approval of the Secretary of Defense) and the Administrator of General Services, each recommend to the President for his consideration one person from civilian life to serve as a member of the Board. The President appoints one member to serve as Chairman. Pursuant to authority vested in it to delegate its powers, functions, and duties, the Board has established regional boards, now three in number, located in New York, Detroit, and Los Angeles. Each regional board is composed of a chairman and additional board members appointed by the chairman of the statutory board.

The act applies to all receipts and accruals under contracts with Government departments named in the act, and under related subcontracts, except those attributable to contracts specifically exempted from the act under section 106 and those to which the act is not applicable by virtue of the fact that they are below the minimum amount or "floor" specified in section 105(f).

The renegotiation process is required to be conducted not with respect to an individual contract placed by a particular procurement agency, but with respect to all amounts received or accrued by a contractor during a fiscal year (or such other period as may be fixed by mutual agreement) under contracts (and related subcontracts) with all Government departments subject to the act—i.e., on an "aggregate" or "fiscal-year" basis, and not on a "contract-by-contract" basis.

The process prescribed by the act for determining excessive profits requires (1) that the contractor or group of contractors to be rene-

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gotiated be determined, (2) that the fiscal-year or other accounting period, and the method of accounting, to be used for renegotiation be fixed, (3) that sales, costs, and profits be determined and segregated as between renegotiable and nonrenegotiable business, and (4) that a determination be made, by application of the statutory factors, of the amount of such renegotiable profits which are "excessive profits."

The procedure established by the act for the handling of renegotiation cases requires that there first be an administrative proceeding before the Board in which a determination of excessive profits is made either by agreement between the contractor and the Board or by unilateral order of the Board. Pursuant to the act, the functions exercised by the Board are excluded from operation of the Administrative Procedure Act (except as to the requirements of sec. 3 thereof, relating to publication of rules, orders, etc.).

Under the act, any contractor (or subcontractor) with respect to whom the Renegotiation Board has entered an order determining excessive profits may, within 90 days from the date of mailing of the notice of the order of the Board, file a petition with the Tax Court of the United States for a redetermination of the amount of such excessive profits.[1] In this proceeding, the Tax Court is authorized to determine the amount of excessive profits in an amount less than, equal to, or greater than that determined by the Board.[2]

The proceeding before the Tax Court is required by the act not to "be treated as a proceeding to review the determination of the Board," but to be "treated as a proceeding de novo."[3] The Tax Court, however, holds that under its rules of practice the burden is upon the contractor to prove that the Board's determination is erroneous.[4] The rule of practice applied by the Tax Court to place the burden of proof upon the contractor is now contained in rule 32, which reads as follows:

> The burden of proof shall be upon the petitioner, except as otherwise provided by statute, and except that in respect of any new matter pleaded in his answer, it shall be upon the respondent.

Consistent with this position, the Tax Court has also adopted a rule which requires the contractor in his petition (1) to state the amount of excessive profits determined by the Board, (2) to make "clear and concise assignments of each and every error which the petitioner alleges to have been committed by the Board," (3) to make "clear and concise * * * statements of the facts upon which the petition relies as sustaining assignments of error," and (4) to attach any statement furnished him by the Board "setting forth the facts upon which the determination of excessive profits was based and the reasons for such determination * * *." [5] The Tax Court has also adopted a rule, applicable to renegotiation cases,[6] which provides that "failure to adduce evidence in support of the material facts alleged by the party having the burden of proof and decided by his adversary, may be ground for dismissal." [7]

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[1] § 108.
[2] Id.
[3] Id.
[4] *Cohen* v. *Secretary of War*, 7 T.C. 1002 (1946).
[5] Id.
[6] Rule 64. Rule 64 provides that, "Except as otherwise prescribed by this rule, cases for the redetermination of excessive profits under the Renegotiation Acts shall be governed by the existing rules of practice before this court."
[7] Rule 31(g).

For the conduct of renegotiation proceedings, the act [8] confers upon the Tax Court "the same powers and duties," insofar as applicable, as it has by virtue of certain sections of the Internal Revenue Code [9] for purposes of tax cases. Thus, renegotiation proceedings of the Tax Court and its divisions are required to be conducted "in accordance with such rules of practice and procedure (other than rules of evidence) as the Tax Court may prescribe and in accordance with the rules of evidence applicable in trials without a jury in the U.S. District Court of the District of Columbia." [10] Further, the Tax Court is authorized to designate an attorney to act as a commissioner in a particular case.[11] Pursuant to this authorization, the Tax Court has employed commissioners in renegotiation cases to conduct hearings and to make proposed findings of fact in renegotiation cases.[12]

The Tax Court is also authorized to use a "division" of the court, consisting of one or more judges thereof,[13] in connection with proceedings in renegotiation cases. Such a division is authorized to hear any proceeding in connection with a renegotiation case.[14] If an opportunity to be heard is given before such a division, neither party is entitled to be heard by the Tax Court upon review, except upon a specific order of the chief judge.[15] The report of any determination which is made by a division and which constitutes its "final disposition of the proceeding" in a renegotiation case, becomes the report of the Tax Court within 30 days after the report by the division, "unless within such period the chief judge has directed that such report shall be reviewed by the Tax Court." [16] The practice actually followed by the court with respect to the use of divisions for the handling of renegotiation cases is to assign each case to a one-judge division for decision, to have it reviewed by the chief judge, and if the chief judge so determines, to refer the report of the individual judge to the full court of 16 judges for its review.

All reports of the Tax Court and all evidence received by the Tax Court and its divisions are required to be public records open to the inspection of the public.[17] Furthermore, the Tax Court is required to publish the reports of its decisions in renegotiation cases.[18]

The act also provides that "the functions exercised under [the act] shall be excluded from the operation of the Administrative Procedure Act, except as to the requirements of section 3 thereof." [19] Since the functions of the Tax Court are presumably "functions exercised under the act," Tax Court proceedings in renegotiation cases apparently are excluded from operation of the Administrative Procedure Act, except as to the requirements of section 3 thereof (relating to notification of rulemaking, etc.).[20]

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[8] § 108.

[9] These sections, as they appear in the Internal Revenue Code of 1954, are secs. 7451 (relating to fee for filing petition), 7453 (relating to rules of practice and procedure and evidence), 7455 (relating to service of process), 7456 (a) and (c) (relating to administration of oaths and procurement of testimony), 7457(a) (relating to witnesses' fees), 7458 (relating to hearings), 7459 (a) (relating to reports and decisions), 7460 (relating to provisions of special application to divisions), 7461 (relating to publicity of proceedings), and 7462 (relating to publication of reports).

[10] I.R.C., § 7453.

[11] I.R.C., § 7456(c).

[12] Tax Court rule 48.

[13] I.R.C., § 7444(c).

[14] I.R.C., § 7460(a).

[15] I.R.C., § 7458.

[16] I.R.C., § 7460(b).

[17] I.R.C., § 7461.

[18] I.R.C., § 7462.

[19] § 111.

[20] 60 Stat. 237.

Section 108 of the 1951 act, like provisions in the 1943 act, vests the Tax Court with "exclusive jurisdiction * * * to finally determine the amount * * * of excessive profits" and provides that "such determination shall not be reviewed or redetermined by any court or agency."

Section 108A, added by amendments made in 1956,[21] provides that the decision of the Tax Court under section 108 of the act "may, to the extent subject to review, be reviewed by" certain specified courts of appeal. The committee reports accompanying the legislation which added section 108A indicate that Congress, in adding that section, did not intend to change the scope of review of Tax Court decisions in renegotiation cases, but merely intended to broaden the venue in order to relieve contractors of the unnecessary expense and travel required in pursuing appeals in the U.S. Court of Appeals for the District of Columbia, which then appeared to be the only court in which review could be had.[22]

B. Brief History of Renegotiation

Renegotiation, as it stands under the 1951 act, is an outgrowth of several earlier renegotiation statutes and of numerous amendments both to those statutes and to the 1951 act. The first renegotiation statute, generally known as the Renegotiation Act of 1942, was enacted during World War II on April 28, 1942.[1] Under this act, renegotiation was conducted on a contract-by-contract basis by procurement officials of the departments concerned. The 1942 act was amended by amendments made in October 1942,[2] which placed renegotiation on a fiscal-year basis, and by amendments made in July 1943, which extended the application of the act.[3]

The 1942 act was amended and extended by the Renegotiation Act of 1943, which was enacted on February 25, 1944, as part of the Revenue Act of 1943.[4] The 1943 act amendments provided the factors to be taken into consideration in determining excessive profits, provided for the de novo redetermination proceeding before the Tax Court, and extended the renegotiation authority to December 31, 1944, giving the President authority to extend it beyond that date. The President exercised his authority to extend the act, extending it to December 31, 1945.[5]

There was no renegotiation authority applicable to profits attributable to performance during the years 1945 and 1946.

On May 21, 1948, the Renegotiation Act of 1948 was enacted, effective with respect to fiscal years ending after June 30, 1948.[6] As first enacted, the 1948 act was applicable principally to certain Air Force contracts for aircraft procurement. Later in 1948, however, the act was amended to authorize the Secretary of Defense to extend it to other contracts[7] and subsequent amendments made the act

[21] 70 Stat. 786 (1956).
[22] H. Rept. 2549, 84th Cong., 2d sess. (accompanying H.R. 11947), p. 25.
[1] § 403 of the Sixth Supplemental National Defense Appropriation Act, 56 Stat. 245, as amended, 50 U.S.C. App. § 1191 et seq. (1946).
[2] Revenue Act of 1942, § 801, 56 Stat. 982.
[3] 57 Stat. 347, 564 (1943), 50 U.S.C. App. § 1191 (Supp. 1952).
[4] 58 Stat. (1944) 78; 50 U.S.C. App. § 1191 (1946).
[5] Proclamation 2631, 9 F.R. 13,739 (1945), at which time the act terminated.
[6] Supplemental National Defense Appropriation Act of 1948, 62 Stat. 259 (1948); 50 U.S.C. App. § 1193 (Supp. 1952).
[7] Second Deficiency Appropriations Act, § 401, 62 Stat. 1049 (1948).

applicable to all negotiated Department of Defense contracts entered into during the Government fiscal years 1950 and 1951.[8] Administration of the 1948 act was placed under the Secretary of Defense, who established departmental renegotiation boards which were subject to review by the Military Renegotiation and Review Board, and was based largely on the World War II statute and procedures.

The Renegotiation Act of 1951 was enacted on March 23, 1951,[9] upon the outbreak of Korean hostilities, and granted renegotiation authority effective with respect to amounts received or accrued on or after January 1, 1951, for a period of about 3 years, or until December 31, 1953.

On September 1, 1954, 8 months after the act had expired, the 1951 act was amended and extended for 1 year from its expiration date,or until December 31, 1954.[10] These amendments raised the "floor," or minimum amount renegotiable under the act, from $250,000 to $500,000;[11] enlarged the exemption for contracts not connected with the national defense;[12] modified the partial exemption for sales of durable productive equipment;[13] provided an exemption for standard commercial articles;[14] modified the exemption for contracts with common carriers for transportation;[15] and made certain other changes.[16]

On August 3, 1955, about 7 months after the act had expired, the 1951 act was again amended and extended for a period of 2 years from its expiration date, or until December 31, 1956.[17] These amendments broadened the provisions suspending the profit limitations of the Vinson-Trammell and Merchant Marine Acts to suspend those limitations where the sales were exempt under the standard commercial article exemption;[18] broadened the standard commercial article exemption to include standard commercial services;[19] added an exemption for certain construction contracts let by competitive bidding;[20] further modified the exemption for sales of durable productive equipment;[21] and directed a complete study of the act.[22]

On August 1, 1956, the 1951 act was extensively amended and further extended for a period of 2 years, or until December 31, 1958.[23] These amendments modified the termination provisions;[24] narrowed the departments whose contracts are subject to the act;[25] provided for a 2-year carryforward of losses on renegotiable business;[26] modified the filing requirements and the periods of limitation;[27] raised the "floor" from $500,000 to $1 million;[28] modified the provisions relating to computation, for purposes of the "floor," of the aggregate amounts

[8] National Military Establishment Appropriations Act, 1950, § 622, 63 Stat. 1021 (1949); General Appropriations Act, 1951, § 618, 64 Stat. 754 (1950).
[9] 65 Stat. 7 (1951), 50 U.S.C. App. § 1211–33 (Supp. 1952).
[10] 66 Stat. 1116 (1954).
[11] Id., § 2.
[12] Id., § 3.
[13] Id., § 4.
[14] Id., § 5.
[15] Id., § 6.
[16] Id., §§ 7 and 8.
[17] 69 Stat. 447 (1955).
[18] Id., § 2.
[19] Id., § 3.
[20] Id., § 4.
[21] Id., § 5.
[22] Id., § 6.
[23] 70 Stat. 786 (1956).
[24] Id., § 2.
[25] Id., § 3.
[26] Id., § 4.
[27] Id., § 5.
[28] Id., § 6.

received from persons under common control, etc.;[29] made technical amendments to the mandatory exemption for certain subcontracts related to contracts exempt from the act;[30] substantially modified the exemption for standard commercial articles and services;[31] made the civil service laws and regulations applicable to Board personnel;[32] modified the provisions relating to the circumstances under which the filing of a petition with the Tax Court would operate to stay execution of an order of the Board;[33] broadened the venue for appeals to circuit courts from Tax Court decisions in renegotiation cases;[34] modified the provisions relating to prosecution of claims against the United States by former employees of the Board, etc.;[35] and instituted a requirement that the Board file annual reports of its activities with Congress.[36]

On September 6, 1958, the act was amended to bring the National Aeronautics and Space Administration under its coverage and was extended for a period of 6 months, or until June 30, 1959.[37]

On July 13, 1959, the act was last amended and extended for a period of 3 years, or until June 30, 1962.[38] These amendments extended the period for carryforward of losses from 2 to 5 years;[39] increased the compensation of the General Counsel of the Board;[40] and directed a study of procurement policies and practices, as well as this study of renegotiation.[41]

[29] Id., § 7.
[30] Id., § 8.
[31] Id., § 9.
[32] Id., § 10.
[33] Id., § 11.
[34] Id., § 12.
[35] Id., § 13.
[36] Id., § 14.
[37] 72 Stat. 1789 (1958).
[38] 73 Stat. 210 (1959).
[39] Id., § 2.
[40] Id., § 3.
[41] Id., § 4.

SECTION 2. SHOULD RENEGOTIATION BE CONTINUED?

A. Administration Views

1. *President's budget message.*—The President, in his budget message which was submitted to the Congress on January 18, 1962, made the following statement with regard to the continuation of renegotiation:

The Renegotiation Act, which provides for the recapture of excessive profits on certain Government contracts, expires on June 30, 1962. An extension of this legislation is being proposed.

2. *Renegotiation Board.*—The Renegotiation Board in identical letters dated January 22, 1962, to the President of the Senate and to the Speaker of the House, made the following statement with respect to continuation of the Renegotiation Act:

Forwarded herewith and recommended for enactment is a draft of legislation to extend the Renegotiation Act of 1951.

The President's budget, transmitted to the Congress on January 18, 1962, states on page 100: "The Renegotiation Act, which provides for the recapture of excess profits on certain Government contracts, expires on June 30, 1962. An extension of this legislation is being proposed." The proposed legislation is transmitted pursuant to this recommendation. The Bureau of the Budget has advised that there is no objection to the submission of this legislation to the Congress, and that enactment thereof is in accord with the program of the President.

The proposed legislation would amend section 102(c)(1) of the Renegotiation Act of 1951, as amended (50 U.S.C. App. 1212(c)(1)), to extend the act for 4 years, through June 30, 1966.

The purpose of statutory renegotiation is to eliminate excessive profits from defense contracts and subcontracts. For some years past the defense procurement program has involved, and for the foreseeable future is likely to continue to involve, the expenditure of vast sums of money for the purchase of many different types of weapons and related materials, including highly specialized items, many of unprecedented nature because of the rapid technological changes and developments in the aircraft, missile, and space fields. In such procurement, past production and cost experience is not always available for forecasting accurately the costs of such items. Hence, pricing policies and contracting techniques of the Department of Defense and other procuring agencies cannot in all cases guarantee against excessive profits. The renegotiation law is designed to provide this safeguard. It has also helped to bring about closer pricing, and has proved particularly effective in the subcontracting areas where maintenance of pricing controls is extremely difficult.

For the fiscal year 1962, it is estimated that expenditures for national defense will aggregate approximately $51.2 billion; and for the fiscal year 1963, it is estimated that such expenditures will be greater. Approximately one-half of such expenditures will be for the procurement of goods and services. In view of the nature and amount of such procurement, and the cost uncertainties attendant thereon, it is recommended that the renegotiation authority be continued for an additional 4 years.

The enactment of this proposal would result in indeterminable savings to the Government.

Sincerely yours,

(Signed) Lawrence E. Hartwig,
Lawrence E. Hartwig,
Chairman.

One enclosure: Draft bill.

A BILL To extend the Renegotiation Act of 1951

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 102(c)(1) of the Renegotiation Act of 1951, as amended (50 U.S.C. App. Sec. 1212(c)(1)), is amended by striking out "June 30, 1962" and inserting in lieu thereof "June 30, 1966".

3. *General Services Administration.*—The General Services Administration, by letter dated January 19, 1961, advised as follows with respect to application of the Renegotiation Act to contracts placed by it:

> Most GSA contracts are exempted from the subject act, under its provisions and related regulations of the Renegotiation Board. GSA contracts having a direct connection with national defense may, however, be subject to the act.
>
> We believe the present act, as implemented, reflects the proper status for most GSA contracts in view of the basic purposes of the act. As to the few contracts which we enter into, to which renegotiation is applicable, it is our recommendation that such applicability be continued.

The General Services Administration, in a letter dated March 29, 1961, also made the following further statements in this regard:

> The reason for having recommended in our letter of January 19, 1961, that the Renegotiation Act be continued in its present form, is that we believe it to be in the Government's best interest for many contracts to be subject to renegotiation to assure that excessive overcharges are not made. However, it should be pointed out that the act's impact on GSA's buying for its own account is comparatively slight.
>
> We believe our knowledge of past procurement and careful checks of bidders' confidential data afford adequate safeguards against overpricing, but the existence of the Renegotiation Act operates as a deterrent against sharp practices on a contractor's part, and also will permit relief in the cases where our analysis of the price situation proves to be inadequate.

Information furnished by the General Services with respect to contracts placed by it is set forth in Appendix G.

Information furnished by the General Services Administration discloses that except in fiscal years 1957 and 1958, 100 percent of the dollar amount of contracts placed by it during the fiscal years 1956 through 1960 were on a firm fixed-price contract basis. In the fiscal year 1957, 1 percent of the dollar amount of contracts placed was placed on a cost-plus-fixed-fee basis, and in fiscal year 1958, 4 percent of the dollar volume was placed on a cost-plus-fixed-fee basis. The GSA has stated, with respect to the relatively few contracts placed by it on which there was no prior cost or production experience, that substantially accurate initial pricing information is believed to have been obtained in spite of the absence of such prior production experience and cost data. The GSA is further of the opinion that its knowledge of past procurement, its careful checks of bidders' confidential data, and periodic audits of contractors' records, affords adequate safeguards against overpricing. The information furnished by GSA

also discloses that the types of products and services procured by it under contracts which are subject to renegotiation are clearly not in the nature of novel and complex defense items.

4. *National Aeronautics and Space Administration.*—The National Aeronautics and Space Administration, by letter dated March 7, 1961, advised as follows with respect to application of the Renegotiation Act to contracts placed by it:

> NASA engages extensively in contracting for research and development activities in the space field. Purchases and contracts for the 6-month period ending December 31, 1960, amounted to $340 million. Therefore, it would appear desirable that NASA contracts should be subject to the provisions of the Renegotiation Act, and that the expiration date of the act be extended.

Information with respect to contracts placed by the National Aeronautics and Space Administration is set forth in Appendix F.

The National Aeronautics and Space Administration states that since most of its procurements are for research and development relating to aeronautical and space activities with respect to which there is relatively little cost and production experience available, most of its contracts are placed on a cost-plus-fixed-fee basis. This raises the question of the extent to which overruns or underruns of estimated costs have occurred under such contracts. In this connection, NASA stated that most of the major contracts placed by it since its establishment are still active, and that consequently, information relating to the extent of overruns or underruns and to the profit experience of contractors under those contracts is not yet available. However, based on the nature of the items procured as described in the information furnished, it appears that those items are of the type cited by the proponents of the act as justification for its application.

5. *Atomic Energy Commission.*—The Atomic Energy Commission submitted a letter, dated June 2, 1961, which reads as follows:

U.S. Atomic Energy Commission,
Washington, D.C., June 2, 1961.

Mr. Colin F. Stam,
Chief of Staff, Joint Committee on Internal Revenue Taxation,
Congress of the United States

Dear Mr. Stam: This is in response to a letter of January 4, 1961, wherein you requested our views with respect to whether contracts made by the Atomic Energy Commission should continue to be subject to the Renegotiation Act.

As stated in our report to you dated February 27, 1961, 83 to 88 percent of the total dollars under AEC prime contracts during the fiscal years 1956–60 were under cost-type contracts, which range from no fee to a maximum fee of 10 percent of the estimated cost. Our fixed-price construction contracts, awarded through formal advertising, and ore concentrate contracts which account for a very substantial part of the remaining contracts, are exempt from renegotiation.

The primary areas where the Renegotiation Act may have an impact on our program are: (1) A limited number of fixed-price contracts with sole source suppliers; and (2) fixed-price subcontracts placed by our cost-type contractors. In the first area we endeavor to insure reasonableness of price through cost and price analysis. In the second area we seek the same result by (1) careful review of cost-type contractors' procedures which emphasize the placing of subcontracts by competition; (2) requiring specific approval of such subcontracts when they exceed a specified dollar amount; and (3) periodic review and approval of cost-type contractors' subcontracting operations.

In view of the fact that the Renegotiation Act does not substantially affect our program, we defer to the views of those agencies which are substantially affected by the act.

The Bureau of the Budget has advised that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

GLENN T. SEABORG, *Chairman.*

Information with respect to contracts placed by the Atomic Energy Commission is set forth in Appendix E.

6. *Federal Maritime Administration and Board.*—The Federal Maritime Board advised, by letter dated March 8, 1961, that it "does not object to the continuing application of the Renegotiation Act to its construction-differential subsidy contracts." The Federal Maritime Administration advised, by letter dated March 8, 1961, that it "does not object to the continued application of the Renegotiation Act to its contracts."

Information concerning procurement activities of the Federal Maritime Administration and Federal Maritime Board is set forth in Appendix D.

The profit experience of contractors under contracts placed by the Federal Maritime Administration and Board is indicated by the data in Appendix D. In the case of contracts for new construction and reconversion of ships awarded during the fiscal years 1956 and 1957 (and settled as of March 21, 1961), the data in Appendix D shows that contractors incurred heavy losses and no profits. In the case of those contracts of this kind with respect to which settlement had not been made as of March 21, 1961, the Board and Administration have advised that it appears from their records that profit experience of contractors under contracts awarded in fiscal years 1958 and 1959 will range from an estimated 5-percent loss to an estimated 5-percent profit. In the case of ship repair contracts placed by the Board and the Administration during the fiscal years 1956 through 1960, the data in Appendix D also shows that contractors have experienced heavy losses or very low profits.

The Board and Administration have also advised that in the case of contracts where estimated costs have been employed in initial pricing, an analysis of completed contracts reveals that actual costs overrun (i.e., exceed) estimated costs by 7.7 percent.

From a review of the information submitted by the Federal Maritime Board and Maritime Administration it is noted that, except for the construction of the NS *Savannah*, the development of a maritime gas-cooled reactor, and the design of a hydrofoil, contracts placed by it are not for products in the nature of novel and complex items sometimes cited by proponents of the act as justification for its application; that in terms of dollar volume, 99.98 percent of the contracts are placed on a fixed-price type contract basis and in terms of numbers of actions, 99.99 percent of the procurements are placed on a fixed-price contract basis; and that the profit experience of contractors performing under contracts with the Federal Maritime Board and Maritime Administration have generally shown heavy losses or very low profits.

B. STAFF RECOMMENDATIONS

1. *Extension of the act.—It is recommended that the Renegotiation Act be extended for 2 years, that is, until June 30, 1964.*

Changes have recently been made in the composition of the Renegotiation Board, and the newly constituted Board has been con-

ducting a reexamination of the renegotiation process. The new Chairman of the Renegotiation Board, in a letter dated December 21, 1961, to the Chairman of the Joint Committee on Internal Revenue Taxation, made the following statements in this connection.

During the 7 months since I assumed the position of Chairman, the Board and its staff have been engaged in a continuous, and still continuing, reexamination of the renegotiation process. We have endeavored in this effort, as far as possible, to set aside preconceptions and mere tradition. Our aim has been to improve renegotiation procedures, to simplify them, and to make them better known to the public. We believe that we have made substantial improvements which have met and overcome at least some of the criticisms received by your committee from industry sources. We shall continue our studies and efforts in the hope of effecting further improvements.

Although the staff has in the course of its study of renegotiation received many proposals for changes in the act (summarized in Appendix A), the staff does not believe it would be advisable to suggest any basic changes in the act while the Renegotiation Board is conducting its reexamination of the renegotiation process. The various proposals received by the staff and set forth in Appendix A have been made available to the Renegotiation Board for use in connection with its reexamination of renegotiation. The Renegotiation Board made comments on those proposals in its letter dated December 21, 1961, to the chairman of the Joint Committee on Internal Revenue Taxation, which is reproduced in Appendix B.

Although the staff recommends that the act be extended for a period of 2 years, evaluation of renegotiation in its operation and results, leads to the conclusion that renegotiation should not become a permanent part of the law, since it being a process which requires the exercise of judgment by men rather than an application of fixed rules of law, should have periodic review by the Congress.

2. *Appellate review.*—Objection has been raised with regard to the scope of appellate review of Tax Court decisions in renegotiation cases permitted under present law.

It is the opinion of the staff that no change should be made at this time in those provisions of present law concerning the scope of appellate review of Tax Court decisions in renegotiation cases. In addition to the determination by the Renegotiation Board, contractors are entitled to a redetermination proceeding before the Tax Court.

There are set forth below letters which have been received from the Tax Court in regard to its proceedings in renegotiation cases.

JANUARY 26, 1962.

Hon. COLIN F. STAM,
Chief of Staff, Joint Committee on Internal Revenue Taxation,
House Office Building, Washington, D.C.

DEAR COLIN: This is in reply to your telephone inquiry of yesterday regarding renegotiation cases in the Tax Court.

The views expressed in Judge Murdock's letter to you of May 15, 1961, are reaffirmed and I see no need for repeating them here.

There are a few changes in the statistics cited in Judge Murdock's letter, however, and the following figures are given for your information.

A total of 1,024 renegotiation cases were docketed with the court from the beginning up to December 31, 1961. Nine hundred and fifty-nine cases have been closed, leaving a total of 65 pending cases. The total amount determined in the cases docketed is $790,518,396.16. A majority of the cases were settled by the parties. In only 274 of the cases was the amount finally determined different from the amount originally determined. The difference was a reduction of $65,295,417.01. The amount determined in the 65 pending cases is $144,064,493.

I trust the above information will serve your purpose, but I shall be happy to supply any further data you may require.

Very truly yours,

(Signed) Norman O. Tietjens,
NORMAN O. TIETJENS, *Chief Judge.*

TAX COURT OF THE UNITED STATES,
Washington, May 15, 1961.

Hon. COLIN F. STAM,
Chief of Staff, Joint Committee on Internal Revenue Taxation,
House Office Building, Washington, D.C.

DEAR COLIN: The trial before the Tax Court in a renegotiation case is a de novo proceeding, as the law requires. It is not a review of the action of the Renegotiation Board. The Tax Court decides each case solely on the basis of the evidence introduced in the trial before it. The Tax Court does not see or consider the proceedings in the Renegotiation Board or regard anything in those proceedings as evidence before the Tax Court, with the possible exception that some evidence introduced in the renegotiation proceedings might qualify as admissible evidence before the Tax Court and be introduced into the Tax Court record by one of the parties. Such evidence would have no greater or less weight because it had been introduced in the renegotiation proceedings.

The Tax Court has explained in its rules and opinions that the contractor must assume the burden of the moving party in the proceeding and if the proof before the Tax Court is inadequate to support an independent determination, then of course the court has to leave the parties as it found them, that is, it cannot change the determination of the Renegotiation Board. See rule 32 and *Nathan Cohen,* 7 T.C. 1002.

A total of 1,018 renegotiation cases were docketed with the Tax Court from the beginning up to April 30, 1961, of which 952 had been closed, leaving a total of 66. The total amount determined by the renegotiation authority in those cases was $784,828,396.16. A majority of the cases were settled by the parties. In only 272 of the cases was the amount finally determined different from the amount originally determined. The difference was a reduction of $65,170,417.01. The amount of the determination involved in the 66 cases which are still pending is $139,664,493.

I trust that the above answers your inquiry, but if you want any further information I will be glad to supply it.

Very truly yours,

J. E. MURDOCK, *Chief Judge.*

SECTION 3. COVERAGE OF THE ACT

Except for those receipts or accruals attributable to contracts exempt from the act under section 106 and those which are not renegotiable because they are below the minimum amount or "floor" specified in section 105(f), the act applies to all amounts received or accrued on or after January 1, 1951, under contracts with the Departments named in the act, or under related subcontracts.[1]

A. Receipts and Accruals Subject to Act

Present law.—Under the act, the Board is required to exercise its powers with respect to all amounts received or accrued under all contracts, and related subcontracts, subject to the act, and "not separately with respect to amounts received or accrued" under separate contracts or subcontracts.[2] The contracts referred to are those to which the act is "applicable," i.e., those with the Departments named in the act which are not exempt under section 106.[3] The subcontracts referred to are the contracts or arrangements defined by section 103(g) as being "subcontracts."

The term "subcontract" is broadly defined to include three different classes of subcontracts. The first class comprises "any purchase order or agreement * * * to perform all or any part of the work, or to make or furnish any materials, required for the performance of any other contract or subcontract," but "does not include any purchase order or agreement to furnish office supplies." [4] The second class comprises "any contract or agreement covering the right to use any patented or secret method, formula, or device for the performance of a contract or subcontract." [5] The third class comprises "any contract or agreement * * * under which (*a*) any amount payable is contingent upon the procurement" of any renegotiable contract or subcontract, or (*b*) "any amount payable is determined with reference to the amount" of a renegotiable contract or subcontract, "or (*c*) any part of the services performed or to be performed consist of the soliciting, attempting to procure, or procuring" a renegotiable contract or subcontract.[6]

B. Departments Covered by the Act

Present law.—A contract is not subject to the act unless it is with one of the departments specifically named in section 103(a) of the act or with one of the departments designated by the President pursuant to that section. The departments specifically named in the act at the present time are the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, the Maritime Administration, the Federal Maritime Board, the General Services Administration, the National Aeronautics and Space Administration, and the Atomic Energy Commission. Although the act authorizes the President to designate as a department covered by the act "any other agency of the Government exercising functions having a direct and immediate connection with the national defense * * * during a national emergency * * *," there are no agencies thus designated by the President now subject to the act.

There is set forth below, with respect to each agency now covered by the act, statistical data regarding the procurement activities of those agencies.

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[1] § 102(a).
[2] § 105(a).
[3] § 102(a).
[4] § 103(g)(1); RBR, § 1452.4.
[5] § 103(g)(2); RBR, § 1452.6.
[6] § 103(g)(3); RBR, § 1452.7.

TABLE 1.—*Net value of military procurement actions by type of contract pricing* [1]

[Dollar amounts in thousands]

	1960		1959		1958		1957		1956	
	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent
Department of Defense: [2]										
Fixed price type:										
Firm	$6,645.8	31.4	$7,498.6	32.8	$6,168.6	27.8	$6,360.9	35.3	$5,859.4	36.4
Redeterminable	1,298.1	6.1	1,070.5	4.7	1,630.2	7.4	1,548.1	8.6	1,596.4	9.9
Incentive	2,879.1	13.6	3,508.2	15.3	4,253.7	19.2	3,210.8	17.8	3,096.4	19.2
Escalation	1,336.6	6.3	1,442.8	6.3	1,336.1	6	875.4	4.9	668.3	4.2
Cost type:										
No fee	446.5	2.2	686.5	3	616.6	2.8	338.6	1.9	626.1	3.9
Fixed fee	7,803.4	36.8	7,863.3	34.3	7,363.2	33.2	5,380.9	29.9	3,887.5	24.1
Incentive fee	672.8	3.2	741.2	3.2	703.1	3.2	209.2	1.2	303.7	1.9
Time and materials [3]	64.4	.3	76.7	.3	89.7	.4	72.7	.4	63.7	.4
Labor-hour	14.3	.1	12.1	.1						
National Aeronautics and Space Administration: [4]										
Fixed price type:										
Firm	37,300.0	24	24,000.0	36						
Redeterminable	[5]		[5]							
Incentive	[5]		[5]							
Cost type:										
No fee	200.0	[6]	2,400.0	4						
Fixed fee	118,800.0	76	39,700.0	60						
Time and materials	[5]		[5]							
Federal Maritime Board, Maritime Administration:										
Fixed price—firm	34,784.1	35.6	36,590.1	41.14	39,324.0	33.37	35,401.6	67.29	104,902.8	99.62
Fixed price—with escalation	62,718.5	64.3	50,205.7	56.45	73,010.0	61.96	16,625.2	31.60		
Cost plus fixed fee	15.0	.02	2,141.6	2.41	5,499.3	4.67	585.2	1.11	395.4	.38
Atomic Energy Commission:										
Fixed price type:										
Prime	1,383,450.6		790,290.9		714,038.8		406,626.8		384,091.5	
Sub	546,431.1		463,222.9		469,374.7		476,185.6		388,449.4	
Cost type:										
Prime	1,669,868.6		1,573,393.6		1,406,222.3		1,405,253.5		837,035.7	
Sub	77,771.2		67,060.8		80,593.6		98,057.4		73,319.8	
General Services Administration: [2] [7]										
Firm fixed price	30,570.3	100	41,146.2	100	33,633.1	96	21,989.9	99	6,202.0	100
Cost plus fixed fee	0	0	71	0	1,307.0	4	243.0	1	0	0

[1] Source of data: Departments concerned.
[2] Actions of $10,000 or more.
[3] Includes labor-hour contracts for 1958, 1957, and 1956.
[4] Includes all direct awards to business except actions placed under GSA contracts, and purchases and contracts of $2,500 or less; estimates do not vary by more than 10 percent.
[5] Data not available but magnitude of no significance.
[6] Less than one-half of 1 percent.
[7] Data for 1956 are fragmentary; data for 1957 are comparatively accurate; data for 1958, 1959, and 1960 are reasonably complete.

TABLE 2.—*Number of military procurement actions by type of contract pricing provision* [1]

	1960		1959		1958		1957		1956	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Department of Defense: [2]										
Fixed price type:										
Firm	84,690	71.8	87,413	72.4	78,244	72.3	70,921	74.3	63,110	74.8
Redeterminable	3,320	2.8	4,358	3.6	4,560	4.2	3,981	4.2	3,816	4.5
Incentive	5,569	4.7	6,480	5.4	4,505	4.1	3,662	3.8	2,511	3.0
Escalation	4,156	3.5	3,893	3.2	3,994	3.7	2,713	2.9	3,563	4.2
Cost type:										
No fee	4,011	3.4	4,328	3.6	4,748	4.4	4,321	4.5	3,371	4.0
Fixed fee	14,278	12.1	12,371	10.2	10,792	10.0	8,799	9.2	7,217	8.6
Incentive fee	674	0.6	560	.5	214	.2	111	.1	146	.2
Time and materials [3]	1,292	1.1	1,341	1.1	1,210	1.1	933	1.0	599	.7
National Aeronautics and Space Administration:										
Fixed price type:										
Firm	1,769	93	609	93						
Redeterminable	(4)		(4)							
Incentive	(4)		(4)							
Cost type:										
No fee	39	2	12	2						
Fixed fee	96	5	33	5						
Time and materials	(4)		(4)							
Federal Maritime Board, Maritime Administration:										
Fixed price—firm	7,925	99.94	7,801	99.82	8,138	99.83	11,057	99.94	9,512	99
Fixed price—with escalation	4	.05	3	.04	5	.06	2	.02		
Cost plus fixed fee	1	.01	11	.14	9	.11	4	.04	6	1
Atomic Energy Commission: [5]										
Fixed price type:										
Prime	14,531		13,818		14,784		15,248		17,706	
Sub	487,863		456,548		426,633		430,090		349,325	
Cost type:										
Prime	1,049		993		911		804		613	
Sub	1,757		1,554		1,453		4,168		1,467	
General Services Administration:										
Firm fixed price	552	100	618	100	612	99	303	99	52	100
Cost plus fixed fee	0	0	1	0	5	1	2	1	0	0

[1] Source of data: Departments concerned.
[2] Includes actions of $10,000 or more.
[3] Includes labor—hour contracts.
[4] Data not available but magnitude of no significance.
[5] Number of actions includes original contracts, modifications, amendments, and supplemental agreements.

C. Exemptions

(1) PRESENT LAW

Section 106 exempts various types of contracts from the act. This section provides 10 "mandatory" exemptions, 5 "permissive" exemptions, and a "cost allowance" which has the effect of an exemption for integrated producers of certain agricultural products and raw materials.

The mandatory exemptions are provided with respect to: (1) Contracts by a department with any State or other political subdivisions or with any foreign government or agency thereof;[7] (2) contracts or subcontracts for certain agricultural commodities;[8] (3) contracts or subcontracts for minerals, natural deposits, or timber not processed beyond the first form or state suitable for industrial use;[9] (4) contracts or subcontracts with certain regulated common carriers of business utilities;[10] (5) contracts or subcontracts with certain income-tax-exempt organizations;[11] (6) contracts which the Board determines do not have a direct and immediate connection with the national defense;[12] (7) subcontracts directly or indirectly under a contract or subcontract exempted under any paragraph other than paragraph (1), (5), or (8) of section 106(a);[13] (8) contracts awarded by competitive bidding for certain types of construction;[14] (9) certain receipts and accruals from contracts or subcontracts for durable productive equipment;[15] and (10) receipts and accruals for standard commercial articles or standard commercial services.[16] Of these several mandatory exemptions, only the exemption for standard commercial articles and services will be discussed further here.

The standard commercial exemption provided by section 106(e) exempts sales (i.e., receipts and accruals) during a fiscal year under any contract or subcontract for any one of the following five categories: (1) a standard commercial article; (2) a "like" article; (3) a standard commercial service; (4) a "like" service; or (5) any article in a standard commercial class of articles. For the exemption to be applicable with respect to any one of these five categories, the item must meet a "35 percent of sales" test and other tests prescribed by the statute. The "35 percent of sales" test requires that at least 35 percent of the sales of the item be nonrenegotiable during the fiscal year involved and/or the preceding fiscal year, in the case of the standard commercial article, or during the fiscal year involved without reference to the preceding fiscal year, in the case of the other four categories. Certain other tests must also be met in the case of each category. Thus, for an article to qualify as a standard commercial article, it must be one which is either customarily maintained in stock by the contractor or is offered for sale in accordance with a price schedule regularly maintained by the contractor. For an article to be exempt as a "like article"—that is, an article "identical in every material respect with a standard commercial article"—it must be of "the same kind and

[7] § 106(a)(1).
[8] § 106(a)(2).
[9] § 106(a)(3).
[10] § 106(a)(4).
[11] § 106(a)(5).
[12] § 106(a)(6).
[13] § 106(a)(7).
[14] § 106(a)(9).
[15] § 106(c).
[16] § 106(e).

manufactured of the same or substitute materials as a standard commercial article," and must be "reasonably comparable with the price of such standard commercial article." For an article to be exempt as an article in a standard commercial class of articles, the class in which it is grouped must be a "standard commercial class," which, under the statute, means the class must consist of two or more articles with respect to which three conditions are met; namely, (1) "at least one of such articles either is customarily maintained in stock by the contractor" or "is offered for sale in accordance with a price schedule regularly maintained by the contractor," (2) "all of such articles are of the same kind and manufactured of the same or substitute materials," and (3) "all of such articles are sold at reasonably comparable prices." For a service to be exempt as a standard commercial service, it need meet only the 35-percent test, provided it is a service as defined by the statute. For a service to be exempt as a "like service"—that is, a service which is "reasonably comparable with a standard commercial service"—it must be of the "same or a similar kind, performed with the same or similar materials, and has the same or a similar result * * * as a standard commercial service."

A contractor may waive the exemption for sales of any one or all of these five categories for any fiscal year under the conditions prescribed by the statute and regulations. One of these exemptions, that for sales of a standard commercial article is "self-executing," which means that it may be applied by the contractor without the filing of an application therefor; exemptions for sales of any of the other four categories can be obtained only if the contractor files an application with the Board pursuant to the statute and the regulations.

The permissive exemptions permit the Board, in its discretion, to exempt from some or all of the provisions of the act (1) any contract or subcontract to be performed outside the territorial limits of the United States;[17] any contract or subcontract under which, in the opinion of the Board, profits can be determined with reasonable certainty when contract price is established;[18] (3) any contract or subcontract or performance thereunder during a specified period or periods if, in the opinion of the Board, the provisions of the contract are otherwise adequate to prevent excessive profits;[19] (4) any contract or subcontract the renegotiation of which would jeopardize secrecy required in the public interest;[20] (5) or any subcontract or group of subcontracts not otherwise exempt if, in the opinion of the Board, it is not administratively feasible in such case to determine and segregate the profits attributable thereto from the profits attributable to activities not subject to renegotiation.[21] The Board is authorized to exercise its power to grant permissive exemptions either individually or by general classes or types of contracts. The Board is not permitted to delegate its power to grant the permissive exemptions provided under section 106(d).[22]

Under the permissive exemption it is empowered to grant under section 106(d)(5), the Board has issued only one exemption, the so-called "stock-item" exemption.[23] Under this exemption, the Board

[17] § 106(d)(1).
[18] § 106(d)(2).
[19] § 106(d)(3).
[20] § 106(d)(4).
[21] § 106(d)(5).
[22] § 107(d).
[23] RBR, § 1455.6.

has exempted, to the extent of amounts received or accrued prior to July 1, 1962, "all subcontracts subject to the act which are for materials (including maintenance, repair and operating supplies) customarily purchased for stock in the normal course of the purchaser's business, except when such materials are separately purchased for use in performing" renegotiable prime contracts or higher tier subcontracts.

(2) DISCUSSION

The various proposals that have been made concerning exemptions are summarized below in Appendix A. There are certain considerations that should be taken into account in the evaluation of those proposals which will be mentioned briefly here. Some of these considerations are general in nature, in the sense that they are applicable to all the proposals received, while others are applicable only to certain specific proposals.

(*a*) *General consideration*

Possible disadvantage of exemptions to contractors.—A general consideration entering into the evaluation of any of the proposals concerning exemptions is that exemptions may operate to the disadvantage of a contractor in that they prevent losses or low profits on exempt contracts from being offset against profits on other contracts. The possibility that losses or low profits on some contracts could not be offset against profits on other contracts was one of the principal considerations that led to the conduct of renegotiation on a fiscal-year basis rather than a contract-by-contract basis, and was also a consideration behind the provisions of present law which permit a contractor to waive the standard commercial article exemption. It is this same consideration that lies behind the proposal, summarized in Appendix A below, which would permit a contractor to waive *any* exemption provided by the act at the time he files his annual renegotiation report. In the absence of the adoption of a proposal such as this, the adoption of proposals which would expand the exemptions now available under present law might prove disadvantageous to contractors.

(*b*) *Considerations concerning certain specific proposals*

(*i*) *Proposed exemption of fixed-price contracts.*—As is indicated below in Appendix A, various proposals have been received which would exempt fixed-price contracts. The reason given for these proposals, generally speaking, is that the procedures for making and administering such contracts are designed to produce a price which is not likely to result in "excessive" profits. It should be observed in this regard that the Armed Services Procurement Regulations provide as follows with respect to the circumstances under which the firm-fixed-price type of contract is suitable for use:

> The firm fixed-price contract is suitable for use in procurements when stable and reasonably definite specifications are available and when fair and reasonable pricing can be achieved, such as where (i) adequate competition has made initial quotations effective; (ii) prior purchases of the same or similar supplies or services provide reasonable price comparison; (iii) experienced cost information or sound estimates of

> the probable cost of performance are available in the negotiation of contract prices; or (iv) any other reliable basis for proper pricing can be utilized consistent with the purpose of this type of contract. The firm fixed-price contract is particularly suitable in the purchase of standard commercial items, modified commercial items, or military items for which adequate information on production and cost is available.[24]

The quoted provision indicates that the conditions cited as being suitable for the use of a firm-fixed-price contract are not those assigned as requiring the presence of renegotiation.

(*ii*) *Exemption of price redeterminable contracts.*—It has been pointed out, in connection with the proposal that price-redeterminable type contracts be exempted from renegotiation, that the price-redeterminable type of contract provides many of the protections against unreasonable profits which are provided by renegotiation.

The price-redeterminable type contract is one containing a clause which provides for upward and/or downward adjustment of the initially negotiated contract price at one or more times during or after the period of contract performance. Such upward or downward adjustments may be made prospectively, retrospectively, or both. The Armed Services Procurement Regulations describe six different types of redetermination clauses, each of which represents a certain combination of the variable features which may be incorporated in price-redetermination clauses.[25]

Without analyzing each of the possible variations of the price-redetermination type contract, it should be noted that some of them do in fact provide the features which are present in renegotiation for purposes of controlling profits. This is particularly so in the case of the type of price-determination clause which provides for retrospective price determination after completion of performance of the contract.

(*iii*) *Exemption for certain manufacturers' representatives.*—Several considerations have been put forth in justification of the proposal that commissions of "bona fide manufacturers' representatives" be exempted from the act. It is pointed out, for example, that the commissions of a sales representative who is retained as an *independent contractor* by a manufacturer may be subject to the act while the compensation of another person performing a similar sales function as an *employee* of a manufacturer is not subject to the act, but is included as a part of the manufacturer's costs.

It should be observed in this connection that statutes other than the Renegotiation Act require that certain Government contracts contain a warranty under which the contractor warrants that—

> no person has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business.

In the event of breach of this warranty, the Government is empowered to recover the offending commission.

[24] ASPR, § 3-403.1(b).
[25] See ASPR, § 3-403.3.

D. Minimum Amounts Renegotiable—The Statutory "Floor"

Present law.—Except for certain contracts with brokers, manufacturers' representatives, etc., described in section 103(g)(3), the act provides that if the aggregate of the amounts received or accrued during a fiscal year ending after June 30, 1956, is not more than $1 million, such receipts and accruals shall not be renegotiated.[26] The act further provides, however, that if the aggregate of amounts received or accrued during a fiscal year ending after June 30, 1956, is more than $1 million, no determination of excessive profits shall be made in an amount greater than the amount by which such aggregate exceeds $1 million.[27] The minimum amount subject to renegotiation, or "floor," was originally $250,000, was then raised to $500,000, and subsequently raised to the present $1 million. With respect to the contracts with certain brokers, manufacturers' representatives, etc., described in section 103(g)(3), the "floor" provided by the act is $25,000, regardless of the year involved.[28] In addition, the law provides that if the aggregate of the amounts received or accrued during a fiscal year is more than $25,000, no determination of excessive profits with respect to such subcontracts shall be in an amount greater than the amount by which such aggregate exceeds $25,000.[29]

Under present law, if a contractor is subject to the act, he must file an annual financial statement with the Board if the aggregate of his renegotiable sales exceeds the "floor." If such aggregate does not exceed the "floor," the contractor may, if he so elects, file with the Board for such fiscal year a financial statement, known as a statement of nonapplicability, setting forth such information as is required in that form.

[26] § 105(f)(1).
[27] Id.
[28] § 105(f)(2).
[29] Id.

SECTION 4. DETERMINING EXCESSIVE PROFITS

(1) PRESENT LAW

Under the act, the process for determining excessive profits requires that the contractor or group of contractors to be renegotiated be determined; that the fiscal year or other accounting period, and the method of accounting, to be used for renegotiation be fixed; that sales, costs, and profits for the fiscal year (or other accounting period) be determined; that such sales be segregated as between renegotiable and nonrenegotiable business; that such costs be similarly segregated and allowed or disallowed; that such profits be so segregated; and that a determination be made, by application of the statutory factors, of the amount of the renegotiable profits which are "excessive profits."

Contractor or subcontractor to be renegotiated.—Under the statute, the Board is required to exercise its powers with respect to amounts received or accrued by a "contractor or subcontractor" under contracts with the Departments and subcontracts.[1] To apply that provision, it is first necessary to identify the "contractor or subcontractor." The term "contractor or subcontractor" is not defined in the act. However, the act does define the term "person" to include "an individual, firm, corporation, association, partnership, and any organized group of persons whether or not incorporated." [2] The regulations provide that the term "contractor includes subcontractor, except where the context clearly indicates otherwise," [3] and they make it clear that a "joint venture" may be treated as an entity.[4]

Section 105(a) of the act requires renegotiation to be conducted on a consolidated basis with a parent and its subsidiary corporation which constitute an "affiliated group" under section 141(d) of the Internal Revenue Code, if all the corporations in the group request renegotiation on that basis and consent to regulations prescribed by the Board in respect of certain matters.[5] The act also authorizes the Board, in its discretion, and by agreement with the contractor, to conduct renegotiation on a consolidated basis "in order properly to reflect excessive profits of two or more related contractors or subcontractors." [6]

Accounting period.—The act provides that renegotiation is to be conducted "with respect to the aggregate of the amounts received or accrued during the fiscal year (or such other period as may be fixed by mutual agreement)" and "not separately with respect to amounts received or accrued under separate contracts with the Departments or subcontracts," except that the Board may conduct renegotiation with respect to one or more separate contracts at the request of the contractor or subcontractor.[7] The "fiscal year" referred to by the statute is the contractor's taxable year for Federal income tax purposes.[8]

[1] § 105(a).
[2] § 103(j); RBR, § 1451.21.
[3] RBR, § 1451.27.
[4] RBR, § 1457.4.
[5] § 105(a).
[6] Id.
[7] Id.
[8] § 103(h).

With respect to the statutory mandate that the Board exercise its functions with respect to a fiscal year, however, it should be observed that the Renegotiation Board, in its Operational Bulletin No. 60–13, relating to the treatment of long-term contracts extending over more than 1 fiscal year, has directed that events in other fiscal years be taken into account in the case of such contracts. Moreover, in its regulations promulgated under the so-called "risk factor" included in the statutory factors,[9] the Board has provided for taking into account certain events outside the particular fiscal year under review in the following quoted provision:

> * * * The Board will give special consideration to evidence showing risks through actual realization of losses incurred by the contractor in performing contracts in other years similar to the contracts undergoing renegotiation, and losses incurred in the same or other years by concerns other than the contractor, especially when connected with the contractor in any way, and in performing similar contracts.[10]

Concerning the parenthetical material in the statute permitting the Board to exercise its powers with respect to such period other than a fiscal year agreed to by the parties, it should be noted that although regulations provide that renegotiation generally will be conducted on a fiscal-year basis and refer to other bases if authorized by the Board,[11] there are not in fact any provisions in them providing for renegotiation on other than a fiscal-year basis. Furthermore, the General Counsel of the Board, in an opinion in the case of the *Badger Meter Manufacturing Company*,[12] has nevertheless held that the statute does not empower the Board to exercise its powers with respect to a period of two or more fiscal years. The Tax Court, in a decision on a motion in the same case, followed this opinion of the General Counsel of the Board, stating that "The jurisdiction of this court is limited to the period for which the excessive profits were determined [by the Board, presumably] and it has no jurisdiction to determine the amount of excessive profits for any other period." [13]

Accounting methods.—The statute provides that receipts and accruals and costs shall be determined in accordance with the method of accounting employed by the contractor in keeping his records, but that if no such method of accounting has been employed, or if the method of accounting so employed does not in the opinion of the Board (or, upon redetermination, in the opinion of the Tax Court), properly reflect his receipts or accruals, or costs, as the case may be, such receipts or accruals, or costs, shall be determined in accordance with the method which does, in the opinion of the Board (or Tax Court) properly reflect such receipts or accruals, or costs.[14] Although the regulations require the use of the method of accounting employed for Federal income tax purposes, they also provide for "special accounting agreements" in which the contractor and the Board may agree in writing on a method if the tax method is "manifestly un-

[9] § 103(e)(3).
[10] RBR, § 1460.12.
[11] RBR, § 1457.1(b).
[12] Memorandum, Badger Meter Manufacturing Co., LPI No. 21814–FYE 12/31/54, Mar. 30, 1959.
[13] *Badger Meter Manufacturing Company* v. *Renegotiation Board*, Tax Court Docket No. 999R.
[14] § 103(i) (relating to receipts or accruals); § 103(f) (relating to costs). The provisions of § 103(f), relating to costs, refer to "the method of accounting regularly employed." whereas the provisions of § 103(i) do not contain the word "regularly."

suitable because it does not clearly reflect" renegotiable profits and the method to be adopted clearly does reflect them.[15] Such an agreement may change the entire method of accounting, as from cash to accrual, or may change only the treatment of particular costs or classes of costs. Furthermore, a change to the "completed contract method" may be permitted in the case of certain contracts, such as those for construction of vessels, aircraft, etc.

Segregation of sales and costs.—The regulations provide that the terms "renegotiable business" and "renegotiable sales" mean the aggregate business of a contractor or subcontractor under subject prime contracts and subcontracts which are not exempt; further, that the term "nonrenegotiable business" means any business of a contractor or subcontractor other than renegotiable business.[16] Having defined these terms, the regulations state that "The contractor has the primary reponsibility for determining which of its sales are subject to renegotiation" and that this "segregation of sales must be satisfactory to the Board."[17] The regulations then continue by setting forth rules at first in general terms for the method of determining receipts or accruals subject to renegotiation,[18] and then sets forth specific rules for determining receipts or accruals subject to renegotiation in the case of new durable productive equipment,[19] materials other than new durable productive equipment not incorporated in the end product,[20] and with respect to brokers and manufacturers' agents.[21]

Section 103(f) of the act provides that "all items estimated to be allowed as deductions and exclusions under chapter 1 of the Internal Revenue Code * * * shall, to the extent allocable to" renegotiable contracts and subcontracts, "be allowed as items of cost * * *."

Loss carryforwards and carrybacks.—The act allows a 5-year carryforward of losses, providing that a renegotiation loss for any fiscal year ending on or after December 31, 1956, shall be a renegotiation loss carryforward to each of the 5 fiscal years following the loss year.[22] The Board, in its regulations relating to the risk factor discussed above, has made further provision with respect to losses on renegotiable business. The act makes no provision for the carryback of renegotiation losses.

The statutory factors.—Once profits allocable to renegotiable business for the fiscal year (or other accounting period involved) are determined, a determination must be made, by reference to the so-called "statutory factors," as to the portion of those profits which are "excessive profits." Section 103(e) of the act, which sets forth these factors, requires that "favorable recognition" be given to "efficiency of the contractor or subcontractor" and that it take into consideration each of six other listed factors. The six listed factors are (1) reasonableness of costs and profits, with particular regard to volume of production, normal earnings, and comparison of war- and peace-time products; (2) the net worth with particular regard to the amount and source of public and private capital employed; (3) extent of risk assumed, including the risk incident to reasonable pricing poli-

[15] RBR, § 1459.1.
[16] RBR, § 1451.28.
[17] RBR, § 1456.2.
[18] RBR, § 1456.3.
[19] RBR, § 1456.4.
[20] RBR, § 1456.5.
[21] RBR, § 1456.6.
[22] § 103(m)(4).

cies; (4) nature and extent of contribution to the defense effort, including inventive and developmental contribution and cooperation with the Government and other contractors in supplying technical assistance; (5) character of business, including source and nature of materials, complexity of manufacturing technique, character and extent of subcontracting, and rate of turnover; and (6) such other factors, the consideration of which the public interest and fair and equitable dealing may require, which factors shall be published in the regulations of the Board from time to time as adopted.

(2) CRITICISMS RECEIVED CONCERNING PRESENT LAW

Criticisms concerning fiscal-year basis of renegotiation.—Numerous criticisms have been received which are concerned with certain problems arising out of the fact that renegotiation is conducted on an "aggregate" or "fiscal-year" basis. Nearly every group submitting comments in the course of this study has directed itself to these problems. The first problem raised—and the one which is much more important in the view of most—is that deficiencies in profits on renegotiable business for years before or after the year being renegotiated are not required by the law to be, and often are not in fact taken into account by the Renegotiation Board or by the Tax Court in determining whether profits for the year under review are excessive. The second problem concerns the treatment of losses—as distinguished from deficiencies in profits—for years other than the year being renegotiated. In this latter case, the problem raised is that although renegotiable losses from the 5 prior years may be carried forward to the year under review, no provision is made in the act for carrying back losses from years after the year under review.

Various proposals have been suggested to deal with these problems.

With respect to subnormal profits or deficiencies in profits in years before or after the year under review, several different types of proposals have been made. One type of proposal, which for convenience may be referred to as a "factor approach," would require that deficiencies in profits for a certain number of prior and/or subsequent years be taken into account in determining whether profits under the year of review were excessive. One important variation of this approach, referred to as a "moving average," would provide that the amount of excessive profits for a fiscal year not be greater than the amount by which excessive profits for the 5-year period ending with the year under review (determined after combining the contractor's renegotiable sales and profits for such 5-year period) exceed the aggregate excessive profits determined for the preceding 4 years. Another variation would simply provide that there be taken into consideration deficiencies in profits on renegotiable business from the preceding 5 and succeeding 2 fiscal years. Still other variations would take into account a different number of years before and/or after the year under review, or would entirely exclude deficiencies for years after the year under review.

Another type of proposal, which may be called the "deficiency determination approach," would require the Board (or Tax Court), after tentatively determining that there are excessive profits for the year under review, to make a determination of the amount by which

renegotiable profits are deficient in each of a specified number of years before and/or after the year under review, and to offset the amount of the deficient profits so determined against the amount of excessive profits tentatively determined for purposes of arriving at the amount of excessive profits finally to be determined for the year under review.

With respect to losses, the suggestion is simply that provision be made in the act for a 3-year carryback of renegotiable losses.

(3) DISCUSSION

(*a*) *Fiscal-year basis of renegotiation.*—It appears to be agreed by all concerned, including representatives of the Renegotiation Board, that the conduct of renegotiation on a strict fiscal-year basis may result in hardships and inequities to the contractors concerned. Thus, it is agreed that a contractor in years other than the year under review may incur high start-up costs under a long-term contract, realizing deficient profits in those years and substantially higher profits in later years, and on an overall basis still operate at a reasonable level of profits or even at a loss. Similar situations may occur where there are not long-term contracts involved but where there are successive contracts for the production of a particular type of item. In such cases it would obviously be unfair to look only at the year or years of high profits and determine that profits are excessive. Nevertheless, there remain numerous instances in which essentially just that happens under present law and practice. Although the Board now has certain limited means at its disposal to meet these problems, it seems generally agreed that these means fall short of what is required to meet the problem.

(*b*) *The statutory factors.*—The considerations advanced in support of the proposals for amendment of the statutory factors, contained in section 2 of H.R. 7086 as passed by the House [23] are set forth in the House committee report which accompanied that bill.[24] Section 2(a) of that bill contained two proposals. The first would have amended section 103(e) of the act to require that, in giving favorable recognition to the efficiency of the contractor or subcontractor, particular regard be accorded not only to the matters now set forth in section 103(e), but also to "contractural pricing provisions and the objectives sought to be achieved thereby." It was stated in the committee report in connection with this proposal that concern had been expressed that favorable recognition for efficiency was not being given to profits realized from payments to contractors for cost reductions achieved under incentive-type contracts. The committee also stated in this connection that it believed that favorable recognition under the efficiency factor should be given to a contractor for cost reductions brought about, under incentive-type contracts or other types of contracts, through the efficiency of the contractor.

The second proposal contained in section 2(a) would have further amended section 103(e) of the act to require that particular regard be given under the efficiency factor to economies effected through subcontracting with small-business concerns (as defined in sec. 3 of the Small Business Act of 1958). The committee explained in its

[23] These proposals are summarized below in Appendix A.
[24] See House Report No. 364 (86th Cong., 1st. sess., May 14, 1959), pp. 2-3.

report that this amendment was designed to stimulate subcontracting to small-business concerns.

Section 2(b) of the bill contained a proposal which would have amended section 103(e)(2), which contains the so-called "net worth factor". The committee stated in its report that the proposal would merely clarify the distinction between the concept of "net worth" on the one hand, and the concept of "amount and source of public and private capital employed" on the other hand.

Section 2(c) of the bill contained a proposal which would have required the Renegotiation Board, in any statement furnished pursuant to section 105(a) of the act, to indicate "separately, but without evaluating separately in dollars or percentages, its consideration of, and the recognition given to, the efficiency of the contractor or subcontractor and each of the other foregoing factors." In connection with this proposal, the committee stated in its report that it had found that there was a feeling among contractors that statements furnished by the Board in the past had not always adequately indicated the consideration of and the recognition given to, efficiency and the other factors required by the act to be considered, and that it had accordingly adopted the provisions of section 2(c). It was also noted that a similar provision had been in the regulations of the Renegotiation Board for some time.

SECTION 5. RENEGOTIATION BOARD PRACTICE AND PROCEDURE [1]

[1] **Note well:** This description of procedure and practice before the Renegotiation Board was prepared during the first part of 1961. Subsequent to the time of preparation of this material, the Renegotiation Board made certain changes in its procedures. The materials herein describing the procedure and practice of the Board have not been modified to reflect those changes, but a summary of those changes, as contained in a letter from the Board to the chairman of the Joint Committee on Internal Revenue Taxation, has been set forth below in Appendix A.

This description of procedure and practice before the Renegotiation Board is based on discussions with and materials submitted by representatives of the Renegotiation Board, persons formerly serving on or employed by the Board, and numerous contractors' representatives who have had personal experience with Board procedure. The information received with respect to certain aspects of Board procedure has been conflicting, and in such cases, an effort has been made in the text to note these conflicts.

(a) Governing Provisions of Law

The Renegotiation Act exempts the functions exercised by the Board from the operation of the Administrative Procedure Act, except as to the requirements of section 3 of that act.[2] Hence, the statutory provisions governing procedures of the Renegotiation Board are those contained in the Renegotiation Act, section 3 of the Administrative Procedure Act and certain provisions placing restrictions on disclosure of information, such as those found in 18 U.S.C., § 1905.

[2] § 111.

The provisions in the Renegotiation Act affecting administrative practice and procedure of the Board are contained primarily in sections 105 and 107. The effect of these provisions, as well as other pertinent provisions of the Renegotiation Act, will be noted in the course of the discussion below.

The provisions of section 3 of the Administrative Procedure Act read as follows:

> SEC. 3. Except to the extent that there is involved (1) any function of the United States requiring secrecy in the public interest or (2) any matter relating solely to the internal management of an agency—
>
> (a) RULES.—Every agency shall separately state and currently publish in the Federal Register (1) descriptions of its central and field organization including delegations by the agency of final authority and the established places at which, and methods whereby, the public may secure information or make submittals or requests; (2) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal or informal procedures available as well as forms and instructions as to the scope and contents of all papers, reports, or examinations; and (3) substantive rules adopted as authorized by law and statements of general policy or interpretations formulated and adopted by the agency for the guidance of the public, but not rules addressed to and served upon named persons in accordance with law. No person shall in any manner be required to resort to organization or procedure not so published.
>
> (b) OPINIONS AND ORDERS.—Every agency shall publish or, in accordance with published rule, make available to public inspection all final opinions or orders in the adjudication of cases (except those required for good cause to be held confidential and not cited as precedents) and all rules.
>
> (c) PUBLIC RECORDS.—Save as otherwise required by statute, matters of official record shall in accordance with published rule be made available to persons properly and directly concerned except information held confidential for good cause found.

The provisions of section 1905 of title 18 of the United States Code read as follows:

> SEC. 1905. *Disclosure of confidential information generally.* Whoever, being an officer or employee of the United States or of any department or agency thereof, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined not more than $1,000, or imprisoned not more than one year, or both; and shall be removed from office or employment.

(b) Initial Headquarters Processing

Filing requirements.—A contractor who holds renegotiable prime contracts or subcontracts, the aggregate renegotiable receipts or accruals under which exceed the statutory minimum, is required to file a "Standard Form of Contractor's Report" (form RB–1) with the statutory board on or before the first day of the fifth calendar month following the close of his fiscal year.[3] Contractors whose renegotiable receipts or accruals do not exceed the statutory minimum may elect to file a "Statement of Nonapplicability of the Renegotiation Act of 1951, as Amended" (SNA).[4]

Review for surface compliance—Office of Assignments.—Upon receipt of the RB–1 or the SNA at the statutory board, it is first forwarded to the Office of Assignments where it is reviewed for surface compliance, i.e., for faulty execution, incorrect designation of fiscal years and other obvious defects. If corrections are deemed necessary, the forms are returned to the contractor. For internal purposes, a number from the standard industrial classification 4-digit series is stamped on all cases which come before the Board. If no corrections are necessary, they are next forwarded to the Office of Accounting for a "desk audit."

Desk audit; screening report—Office of Accounting.—Upon receipt by the Office of Accounting, the case is assigned to a staff accountant who is usually a specialist in the particular industry involved. The staff accountant conducts a desk audit which consists of an examination of the contractor's accounting data, including particularly his segregation of sales and allocation of costs as between renegotiable and nonrenegotiable business. If the desk audit raises any questions, the contractor is often contacted by telephone or otherwise and is requested to submit any additional accounting information deemed necessary by the staff accountant.

When the desk audit is completed, a "report for screening" is prepared in which the Office of Accounting certifies as to the correctness of the segregation of sales and allocation of costs. The contractor's case file and the report for screening is then forwarded to the Office of Review, Division of Screening and Exemption.

"Screening process"—Office of Review.—Upon receipt by the Office of Review, the case file and report for screening are referred to the Division of Screening and Exemption where the application of the standard commercial article exemption is reviewed to determine whether it has been properly applied, and where a so-called screening process is conducted. The screening process is conducted for the purpose of determining whether the filing should be assigned to the field for renegotiation, or whether it should be withheld from assignment—i.e., "screened out"—on the ground that there is no reasonable likelihood of excessive profits.

By delegation from the Board, the Division of Screening and Exemption is entitled, on its own authority, to withhold any case in which the contractor realized a loss or obviously nonexcessive profits, provided that the renegotiable sales for the year did not exceed $10 million and the renegotiable profits did not exceed 10 percent of sales. If either of these conditions does not exist, that is, if the sales exceed $10 million or if the profits exceed 10 percent of sales, the authority of the Division is limited to making a recommendation to the Board

[3] § 105(e)(1); RBR, § 1470.3(a).
[4] § 105(e)(1); RBR, § 1470.3(b).

that the case be withheld; the final decision whether to withhold in such cases is made by the Board itself. It is only the authority of the Division to withhold that is circumscribed; the Division will, without reference to the Board, in any case in which it believes there exists a reasonable possibility of excessive profits, cause such a case to be assigned to a regional board.

The determination of whether a case is to be screened out is made by reference to information the Board has on file as to the nature of the company's business, its products, previous renegotiation settlements with that company or previous renegotiation settlements with similar companies, and the level of profits and sales reported by the company. Of the various types of information used for this purpose the level of profits permitted under renegotiation settlements with the company for previous years is given primary importance.

Some persons familiar with the screening process have advised that, in addition to the factors just described, the factor of whether the contractor's reported level of profit as a percentage of sales exceeds preestablished permissible levels of profit as a percentage of sales for the industry of which he is a member is frequently determinative of the question of whether a case should be screened out. According to these persons, the level of profit which had in the past been established by the Board for two industries was 2 percent in the case of the meatpacking industry and 20 percent in the case of the pharmaceutical industry. The same persons have advised that once a permissible level of profit stated as a percentage of sales is established for a company by the Board through renegotiation proceedings with respect to a year, that level of profit continues to be treated by the Board as the permissible level of profit for succeeding years, barring any radical change in the nature of the contractor's business.

The screening process ends with a withholding or an assignment. When it is decided that a filing is to be withheld, the contractor is notified by a letter, known as a "letter not to proceed" (LNP). The significance of not proceeding with a case which has been screened out or withheld is that the 1-year period of limitations prescribed by the act for commencement proceedings to determine the amount of excessive profits is not tolled and will expire 1 year after the date of filing of the financial statement required under the act, with the result that all liabilities of the contractor for any excessive profits received or accrued during the fiscal year involved will be thereupon discharged.[5]

Classification and assignment—Office of Assignments.—When a case has not been withheld but is to be assigned, it is classified and assigned to a regional board by the Office of Assignments.

Upon completion of classification the case is assigned to one of the three regional boards located in Detroit, Los Angeles, or New York, with instructions to commence renegotiation. It has been stated, on the one hand, that assignments are "invariably" made on a geographic basis. It has been stated, on the other hand, however, that in rare cases assignments are made on some basis other than a geographic basis, as is permitted by Board regulations.[6]

The length of the period required for processing of a case, from the time of its filing to the time of its assignment to the field, is approxi-

[5] § 105(c); RBR, § 1465.2(a).
[6] RBR, § 1471.2(a).

mately 45 days at the present time, according to representatives of the Renegotiation Board. In this connection, representatives of the Board have advised that, recently, as little as 7 days have been required by the Office of Accounting and by the Office of Review, each, for the complete turnover of each case. Some persons familiar with Board procedures have stated, however, that the period required for processing, from the time of filing to the time of assignment, has been from 6 to 8 months in the past.

Class A and class B cases.—At the time of assignment, every case is designated by the Office of Assignments as either a class A or a class B case.[7] Generally, a class A case is one in which renegotiable profits of more than $800,000 are shown and a class B case is one in which the reported renegotiable profits are $800,000 or less. In the case of brokers or agents holding subcontracts described in section 103(g)(3) of the act, the line of demarcation between class A and class B cases is fixed at renegotiable receipts or accruals of $100,000. The regional boards are authorized, in class B cases, to make final determinations of excessive profits, subject to review by the statutory board if the contractor is unwilling to accept the determination. In class A cases, the authority of the regional boards is limited to making recommendations of excessive profits to the statutory Board for final determination by that Board.[8] For purposes of the 5-year loss carryforward provision in section 103(m) of the act, a filing may be assigned to the field and classified as a class A case even when it shows a loss on renegotiable business, in order that the validity and accuracy of the reported loss may be verified.

(c) Regional Board Procedure

Commencement of renegotiation.—When an assignment is received by a regional board, the regional board sends a notice to that effect to the contractor. This is followed by a formal notice of commencement of renegotiation, sent by registered mail.[9] The mailing of this notice marks the beginning of the various periods of limitation prescribed by section 105(c).

Assignment to renegotiator and staff accountant.—In the regional board, the case is assigned to a renegotiator and an accountant, who comprise a working team from that point on. In large cases, such as those dealing with airframe cases, the renegotiator is usually a regional board member. Each proceeds to study the file and to ascertain what additional information will be required. Working together, the renegotiator and the accountant eventually present a joint or coordinated request to the contractor for such additional information or data. This request is made ordinarily by letter, but sometimes by telephone; and sometimes, when extensive additional information is needed, at a meeting with the contractor's representatives. Whenever the possibility of excessive profits is reasonably indicated, the contractor, unless he has already done so on his own initiative, is invited to submit, among other things, his statement of facts and contentions under the "statutory factors."

[7] RBR, § 1471.2(b).
[8] RBR, § 1471.2(b).
[9] § 105(a); RBR, § 1472.2.

The "Report of Renegotiation".—Ultimately, from the combined efforts of the renegotiator and the accountant, there results a report of renegotiation which consists of part IA, part IB, and part II.

Part IA—Report of renegotiation.—After a desk audit, part IA is prepared by the accountant and contains all the basic accounting data, including detailed cost and profit breakdowns and other schedules, and all the relevant data on the contractor's history, products, plant investment, principal contracts, pricing, executive compensation, and other significant matters. Representatives of the Board have advised that it is not their practice to make plant audits of the contractor's books and records. Board representatives have advised that, whenever possible, accounting disagreements with the contractor are resolved before part IA is prepared, but contractor's representatives have advised that such disagreements are not always resolved. Included in part IA is schedule A, which comprises a summary of the essential accounting detail appearing in that part.

Part IB—Report of renegotiation.—Part IB of the report consists of the contractor's representations and contentions under the statutory factors.

Part II—Report of renegotiation.—Part II of the report is prepared by the renegotiator and contains his analysis and evaluation of the case under the statutory factors. In part II, the renegotiator (1) evaluates the staff accountant's financial analysis contained in part IA, (2) evaluates reports, such as performance and other reports from procurement officials, GAO reports, and FBI reports, (3) evaluates comments from prime contractors, higher tier subcontractors and customers, (4) discusses legal issues which may have arisen, (5) sets forth his analysis of any comparisons made of the contractor under review with other contractors in the same industry or other industries, and (6) concludes his analysis by making a recommendation in terms of a specific amount of excessive profit, if any.

Analysis of comparisons made with other companies.—With respect to the comparisons made by a renegotiator, representatives of the Board have advised that such comparisons need not be made with other companies in other industries; that such comparisons are made on a contract-by-contract basis, not on a product-by-product basis; and that such comparisons are not limited to a comparison of the renegotiable profits of the other companies, but include comparisons of net worth, total renegotiable sales, total renegotiable costs, and other items, depending upon the particular case involved.

Procurement information.—Early in his study of the case, the renegotiator will have or will obtain knowledge of the principal contracts or subcontracts performed by the contractor during the fiscal year under review. The renegotiator then requests the division of procurement affairs of the regional office to obtain for him, from the cognizant procurement department or departments, or from the prime contractor or other customers of a subcontractor, such performance or other information as may be available with respect to such contracts or subcontracts. Using a form questionnaire, and supplementing it with specific additional inquiries as needed, the division of procurement affairs requests and thereafter obtains the desired performance reports. As indicated above, evaluation of these performance reports and other information is made in part II of the report of renegotiation.

With respect to obtaining performance data from procurement officials, former employees of the Board have advised that the pro-

cedure in at least one regional board within the last several years was for the renegotiator to select at random a contract number from the list of contract numbers furnished by the contractor, and to solicit performance information only with respect to such contract. These same persons stated that it was also the practice at that time for the renegotiator to request information from procurement officials relating to the competitive-bid prices submitted on contracts on which the contractor being reviewed was the successful bidder.

Information obtained from the contractor by renegotiator and accountant.—Representatives of the Board have advised that generally, before submission of the case to the Board, there is a free flow of information between the contractor and the renegotiator and staff accountant; i.e., any questions which may arise in the minds of the renegotiator or staff accountant in the review and analysis of the case are discussed with the contractor and any disputes pertaining to such questions are generally resolved prior to ordering the preparation of the Report of Renegotiation. Several contractors' representatives have advised, however, that there are numerous instances in which questions of fact and of law have not been resolved prior to submission of the case to the Board.

Disclosure of information to the contractor.—With respect to the disclosure of information contained in the Report of Renegotiation, persons familiar with regional board procedures have stated that, although the internal procedures of the Board permit a contractor to obtain a copy of part IA of the report if he so requests, there are cases in which part IA was not made available to the contractor on the grounds that the request submitted was not timely. Representatives of the Board have advised that no case is known to them where a request for part IA has been refused regardless of when such request was submitted. Schedule A of part IA, which is usually a one-page recapitulation prepared by the staff accountant of the accounting and financial data submitted by the contractor, is furnished to him, and according to representatives of the Board the contractor's concurrence with respect to such schedule is always obtained.

Part II of the Report of Renegotiation containing the renegotiator's analysis and evaluation of the case is never given to the contractor. Representatives of the Board have stated that while copies of this part are never given to the contractor, he is advised by the renegotiator at the initial renegotiation conference of the substance of data contained therein.

Plant visit.—The Board has advised that in every case that suggests a probability or a strong possibility of excessive profits, unless a recent visit to the contractor's plant was made in connection with an earlier fiscal year, a visit is made before the renegotiator formulates his recommendation to the regional board. The visit, if undertaken, is made by the renegotiator-accountant team, accompanied in some instances by a regional board member.

Legal issues.—Board representatives advise that efforts are made, before the Report of Renegotiation is prepared, to clear up any legal issues arising in the case, but contractors state that sometimes there is no forum for resolution of legal issues and that such issues are not resolved prior to submission of the case to the Board. The Board advises that the services of regional counsel are invoked by the renegotiator or accountant as required.

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Tentative determination by regional board.—If a case is not subject to a "prereview" at the statutory board (as discussed below) and the Report of Renegotiation is ready, it is submitted to the regional board through the director of the division of renegotiating, who appends his concurrence or disagreement with the recommendation of the renegotiator but is not empowered to reject or countermand such recommendation. The case then appears on the meeting agenda of the regional board and is studied in advance of the meeting by each regional board member. When requested by the regional board, the renegotiator (if not already a member of the board) and the accountant both attend and participate in the board meeting at which the case is considered. A "tentative" determination of excessive profits is reached by the regional board which may or may not, but often does, coincide with the recommendation of the renegotiator. Up to this point the contractor has not yet been heard, except through his written submissions.

If a determination is made that the contractor did not realize any excessive profits, a clearance notice is mailed to the contractor (provided, in a class A case, that the concurrence of the statutory board has first been obtained).[10]

Initial renegotiation conference.—If the "tentative" determination reached by the regional board is that the contractor did realize excessive profits, a meeting or "renegotiation conference" is then arranged with the contractor, to take place usually at the regional board office. To this meeting come one or more company officials, who can be accompanied by any professional legal or accounting or other advisers they may wish to bring. Government representation at this initial meeting is usually limited to the assigned renegotiator and accountant. Thus, in large cases where a Board member serves as a renegotiator, that member participates in the initial meeting. Regional counsel will attend if any unresolved legal issues remain. The purpose of the meeting is to review the case with the contractor. The accountant is responsible for developing an agreed set of figures. It is the responsibility of the renegotiator to present the "tentative" determination reached by the regional board and the facts and reasons in support of it.

With respect to the conduct of the meeting, representatives of the Board have advised that the renegotiator does not show the contractor performance reports but that he does make known to the contractor the "substance" of the contents of part II of the "Report of Renegotiation." Thus, the representatives of the Board state that the sum and substance of performance reports and other information obtained from procurement officials are made known to the contractor and that any disagreement as between performance statements submitted by the contractor and those obtained from procurement officials is brought to attention by the renegotiator. They likewise state that the results of any comparisons made of that company with other companies in the same industry or other industries are made known to the contractor but that the names of the companies used in the comparison are not made known to the contractor. With respect to part II, persons who have handled cases before the regional boards have stated that the information contained in that part is very seldom made known to the contractor. They point out that they can-

[10] RBR, § 1473.2.

not obtain or examine copies of performance or other reports; that in some cases the substance of such reports have not been made known to them; that the results of comparisons sometimes are not divulged, and if they are, the names of the companies used in the comparison are not made known to the contractor; and that explanations, if any, by the renegotiator of the Board's reasons under the statutory factors are insufficient and inadequate for contractors to determine upon what basis the Board's decision was made.

Agreement procedure.—If the contractor, either at or after the meeting, accepts the refund proposal, an agreement is prepared and executed for the refund of the amount of excessive profits determined, less any applicable credit for Federal income and excess profits taxes.[11] In a class A case, the agreement is not executed by the regional board unless and until the statutory Board concurs in the determination. In a class B case, the agreement is executed by the regional board on behalf of the Government. For collection of the refund the agreement is referred by the Board to one of the departments [12] named in the act, usually the department with which the contractor's renegotiable business was predominantly done. All renegotiation refunds, whether made by agreement or by order, are collected and deposited in this manner.[13]

Panel conference.—If the contractor is unwilling to accept the tentative determination proposed to him by the renegotiator and refuses to execute an agreement, the contractor is advised that he may have a further conference with a panel consisting of not less than one member of the regional board.[14] In actual practice, with rare exceptions, these panels are composed of three regional board members. If the contractor waives the panel meeting, the renegotiator makes his recommendation to the regional board for its final determination (in a class B case) or its final recommendation (in a class A case). In the event of an increase in the amount of excessive profits previously determined, the contractor is invited to another meeting with the renegotiator and accountant and is again afforded an opportunity for a panel conference. This, again, he may waive. If the contractor requests a meeting with a panel, such a conference is then held. Attending for the Government are the panel members, the renegotiator, the accountant, possibly the regional counsel, and any other regional personnel considered necessary by the panel. Representatives of the Board have advised that part II of the "Report of Renegotiation" is not given to the contractor at this juncture either, and that this is the last step at the regional board level at which the contractor is entitled to a hearing or is given an opportunity to present his case orally.

Panel's determination.—Upon conclusion of the Panel conference, the Panel retires, and, in most cases, returns within a short while on the same day and announces its decision to the contractor. Representatives of the Board state it is not unusual for the Panel to reach its decision within a matter of hours. They state, however, this last step may sometimes be deferred where the contractor's representatives have asked for time to submit additional information or data

[11] § 105(b)(8).
[12] § 105(b)(1).
[13] § 105(b)(7).
[14] RBR, § 1472.3.

on specific points which, or the importance of which, they had not theretofore perceived.

When the Panel reaches its conclusion, if the decision is to adhere to the settlement already proposed to the contractor, as is usually the case, the contractor is asked to signify his acceptance or rejection thereof. If the contractor accepts the decision, the agreement procedure described above is followed. However, if the contractor rejects the decision, or the Panel concludes that the proposed refund should be changed, the case is forwarded to the full regional board for review and the contractor is notified.

Final determination by full regional board.—When the case file is received, a Board meeting is called to discuss the case. The meeting is attended by the full regional board and usually by the various staff members who have worked on the case. This meeting is never attended by the contractor. When a decision is reached, the formal determination of the Board is presented to the contractor for acceptance or rejection.

Summary of facts and reasons; statement of facts and reasons.—It is at this point that the contractor may first request the so-called "Summary of Facts and Reasons" provided for by the regulations. This summary is a written statement of the facts and reasons upon which the Board's determination is based.[15] As a condition to receiving this summary, the contractor must state that he has submitted all the evidence which he believes to be relevant. With or without the summary, an acceptance of the regional's board's determination is followed by execution of an agreement, as discussed above. If the determination is rejected, in a class B case an order is issued by the regional board, and in a class A case an impasse is declared to exist and the case is reassigned to the statutory Board. After an order is issued in a class B case, the contractor may obtain a statutory statement of facts and reasons by requesting it within 30 days [16] from the notice of the order.

Representatives of the Board advised that the written summary sets forth the formal presentation of the Board's facts and reasons for its determination, and that it is virtually identical to the statutory statement of facts and reasons given after a unilateral order is issued or an impasse is declared to exist. Many groups have stated, however, that neither the summary of facts and reasons nor the statement of facts and reasons sets forth with sufficient specificity the reasons for the determination, and that they are not responsive to the issues and contentions presented.

Pre-review by statutory board.—As mentioned briefly above, the full regional board will not reach a tentative determination in cases which are subject to "pre-review," the reason being that, pursuant to internal directives, regional boards are not permitted to present a determination to the contractor until it has been examined in the statutory Board. This procedure is known within the Board as "pre-review". Representatives of the Board have advised that such pre-review is presently confined to cases in which, when the regional board is ready with a determination, there is pending in the Tax Court of the United States a petition by the contractor contesting the determination of the Board for an earlier year. They state the reason for pre-review

[15] RBR, § 1477.3.
[16] RBR, § 1477.2.

is that the Board considers it essential, in the exercise of its overall responsibility, to prevent embarrassment and to assure itself that the proposed action of the regional board is not inconsistent with, and thus prejudicial to, the position of the Government in the Tax Court case.

Thus, before the regional board reaches its tentative determination, the case file is transmitted to the statutory Board. There it is "pre-reviewed" by the Offices of Accounting and Review and at least one, sometimes by two, and possibly by three Board members. Usually the member who served as Chairman of the Division which acted for the Board in the proceeding for the contested year will be one of these members. If the staff and the Division Chairman are not in accord on the case, the Chairman of the statutory Board also examines it. The file is then returned to the regional board, either without objection or with a suggestion for a stated minimum determination or for a permissible range of determinations.

Representatives of the Board have made various statements concerning the kinds of cases in which the "pre-review" practice has been employed. At one point it was stated this practice was followed only in the Tax Court as described above. The latest statement is that "pre-review" was employed in the processing of cases involving machine tools, ship repair, and nonferrous metals (discontinued in 1954), and construction (discontinued in 1956). They have advised that the practice of pre-review has never prevailed in any other fields.

Some former employees of the Renegotiation Board have advised that as currently as 2 years ago a pre-review procedure was still being employed in the processing of cases involving the construction, shipbuilding, machine tool, and airframe industries. With respect to the construction and shipbuilding industries, they state the special treatment began at the inception of the Board (i.e. in 1952), and with respect to the machine tool and airframe industries, the special treatment began about 1954.

(d) Statutory Board Procedure

Examination of class A agreements.—When an agreement in a class A case has been executed by the contractor and transmitted to the statutory Board for concurrence, the entire case file is forwarded with it to the Office of Accounting and then to the Office of Review. These offices consult the Office of General Counsel as occasion requires. A staff recommendation for disposition of the case is then put before the statutory Board. If the Board approves the determination recommended by the regional board, the file is returned to the regional board with instructions to execute the agreement; otherwise, the Renegotiation Board reassigns the case to itself and the contractor is notified accordingly.

Reassignment of class A impasses.—In a class A case where the contractor is unwilling to enter into an agreement embodying the final recommendation of the regional board, an impasse is declared to exist. The case is then reassigned to the statutory Board and the contractor is notified accordingly.

Review of class B unilateral orders.—In a class B case, a unilateral order issued by a regional board is subject to review by the statutory Board, either upon its own motion or, in its discretion, upon the request of the contractor. If no review has been initiated or requested

within 90 days after notice of the order was mailed by the regional board to the contractor, the determination and order of the regional board are deemed to be the determination and order of the Renegotiation Board on such 90th day. Review on its own motion may be initiated by the Board within such 90-day period. Review may be requested by the contractor within such 90-day period, and if requested may be, but is not required to be, initiated by the Board within 90 days after its receipt of such request.[17] Board representatives advise that a request for review is invariably granted and that none has ever been refused. Upon the initiation of a review, the case is reassigned to the statutory Board and the contractor is notified accordingly.

Procedure after reassignment.—After a case has been reassigned to the statutory Board, whether a class A or a class B case, and whatever the reason for the reassignment, the ensuing procedure in the statutory Board is the same.[18] A Division of the Board is immediately appointed by the Chairman of the Board which invariably consists of three members of the Board. The case file then goes to the Office of Accounting for verification of the accounting data, then to the Office of Review, where a report is prepared for the use of the Division. This staff report includes a recommendation as to the disposition which should be made of the case. Any additional information believed necessary will have been obtained or requested from the contractor, from procurement authorities, customers of the contractor, or from any other source the Board may choose. Opinions on legal points encountered will have been obtained from the Office of General Counsel.

Procurement information.—With respect to information from procurement authorities, representatives of the Board have advised that persons in the Office of Procurement Affairs obtain this additional information. This information is in some cases obtained from procurement officials by telephone, in which event, confirming written reports may be requested. In other cases, personal visits by representatives of the Board may be made to the procuring activity, in which event written trip reports may be prepared by the visitors.

Division "dry run" meeting.—Representatives of the Board advised that when all the information is gathered and the case has been reviewed by the Division members, a so-called "dry run" meeting is held. This "dry run" meeting is attended by the three Division members, the Director of the Office of Accounting, specialists from the Office of Review, and on occasion by staff members from the Office of General Counsel. They state that the purpose of the meeting is to review and discuss the entire case, and that in this meeting the Board members have before them the staff recommendations for disposition of the case.

At the conclusion of the "dry run" meeting, the contractor is invited to attend a conference with the Division. Representatives of the Board have stated that whenever possible and appropriate, specific matters which may have developed during the "dry run" meeting are indicated to the contractor as subjects upon which further information or elaboration is particularly desired. However, persons handling renegotiation cases have stated they seldom, if ever, receive any indications of specific matters or issues developed at the "dry run" meeting, and most contractors have indicated that they had never heard of "dry runs."

[17] RBR, § 1475.3.
[18] RBR, § 1472.4.

Division meeting.—At the Division meeting, the contractor is represented by persons of his own choosing while the Renegotiation Board is represented by the Division Chairman and his special assistant, the other Division members, and representatives of the Office of Accounting, the Office of Review, and if necessary, the Office of General Counsel. The procedure at the Division meeting is similar to that employed in the regional board panel meeting. There is no swearing of witnesses and no examination or cross-examination, and no record or transcript is made. Representatives of the Board state that the contractor is informed at the outset by the Division Chairman that the statutory Board is not bound by the regional board determination but will reach its own conclusion with respect to the amount of excessive profits. Board representatives state that, generally, the meeting takes the form of a detailed presentation by the contractor's representatives to justify their retention of the profits realized; that questions are asked freely at all points by Division members and staff personnel; that opinions on particular points are expressed as may be required; and that inaccurate information on both sides is often corrected and arguments exchanged.

With respect to Division meetings, contractors' groups are virtually unanimous in the position that the meeting consists of nothing more than an oral presentation by the contractor of his case, that few questions are asked by the Board or its staff, and that questions asked commonly are not related to the grounds set forth as bases for the determination in the statement of facts and reasons subsequently furnished by the Board. These and other groups state that the substance of performance and other reports are not made known, and that the Board's reasons for its determination are not made clear to the contractor. In fact, some groups state that in view of the lack of free exchange of questions and answers and of the lack of any understanding of the Board's reasoning, they waive their right to attend the meeting. This, they say, is especially true of contractors who may have appeared before the Board once or twice before.

Division determination.—Upon the conclusion of the meeting, the Division and its staff assistants retire to consider the case. Board representatives state that, whenever possible, if no further information is to be submitted by the contractor and no further time for study is needed by the Division, the meeting is reconvened and the Division Chairman announces the conclusion reached by the Division, and the reasons therefor. Persons handling renegotiation cases state that the Division usually reconvenes and announces its decision within a few hours. Board representatives state that the contractor is further advised that the Division will submit its recommendation to the full Board and that the contractor will be notified in due course of the determination made by the Board. After announcing its conclusion to the contractor the Division completes its report of the case. The Division meeting is the last step at the statutory Board level at which the contractor is entitled to a hearing.

Statutory Board review, meeting, and determinations.—When the Division report is received, it is placed on the meeting agenda of the Board, and the case is studied by the remaining Board members. Board representatives have stated that during the Board's study of the case, Board members frequently call in staff personnel to discuss

questions relating to the case. A Board meeting is called and is attended by the Board members and usually by staff members of the Offices of Accounting, Review, and General Counsel. The contractor is never invited to attend this meeting. The Secretary of the Board communicates the determination of the Board to the contractor.

Summary of facts and reasons.—At this point, the same procedure that prevailed in the regional board is now followed by the statutory Board with respect to furnishing the summary of facts and reasons. As at the regional board level, the summary is furnished only upon request of the contractor, who must state that he has submitted all the evidence which he believes to be relevant.

Agreement or order.—If the contractor accepts the determination of the Board, an agreement is made; otherwise, a unilateral order is issued.

Statement of facts and reasons.—When an order is issued, if requested by the contractor within 30 days thereafter, the Board will furnish the contractor with a statement of facts and reasons, also known as the statutory statement.[19] As at the regional board level, Board representatives state the summary of facts and reasons is virtually identical with the statement of facts and reasons. Here, as at the regional board, many groups have strenuously complained of the lack of information and reasoning in the summary and the statement.

Petition for redetermination.—Within 90 days after the mailing of the notice of an order, the contractor may file a petition with the Tax Court of the United States for a redetermination of the amount of excessive profits.[20]

[19] § 105(a).
[20] § 108.

SECTION 6. ADMINISTRATIVE ORGANIZATION AND REPORTING REQUIREMENTS

A. Administrative Organization

(1) PRESENT LAW

Under section 107(a) of the act, renegotiation authority is vested in an "independent establishment in the executive branch of the Government," called the Renegotiation Board, consisting of five members appointed by the President by and with the advice and consent of the Senate. The act provides that the Secretaries of the Army, Navy, and Air Force (subject to the approval of the Secretary of Defense) and the Administrator of General Services shall each recommend to the President one person from civilian life to serve as a member of the Board. A member of the Board is not permitted to actively engage in any business, vocation, or employment other than as a member of the Board. Under section 107(d) of the act, the Board is forbidden to delegate any of its functions, powers, or duties to any person who is "engaged on behalf of any Department in the making of contracts for the procurement of supplies or services, or in the supervision of such activities."

The provisions of the 1951 act represent the first instance in which the renegotiation authority was vested by Congress in an agency independent of the Department of Defense. Under the Renegotiation Acts of 1942, 1943, and 1948, renegotiation was conducted by personnel who, although not contracting officers, were in the procurement agencies.

(2) PROPOSAL RECEIVED FOR CHANGE IN PRESENT LAW

One proposal which would effect a major change in the status of the Renegotiation Board would require that the Renegotiation Board be placed within the jurisdiction of the Secretary of Defense and that it be made a part of the Office of the Secretary of Defense, independent of the Departments of the Army, Navy, and Air Force.

(3) DISCUSSION

Since the inception of renegotiation, the consensus among those who have been concerned with it is that it is essential that there be a close tie between the contracting agencies and the renegotiation authorities. Congressman Vinson, the original sponsor of the legislation which became the Renegotiation Act of 1951, made the following remarks in this connection as the leadoff witness in hearings held by the House Committee on Ways and Means on that legislation:

> Mr. Byrnes. If I may inquire, briefly—and the answer probably is obvious—why is it that the Board is to be composed of representatives of the same group that make the contracts in the first instance?

Mr. VINSON. My answer to that is that the closer you tie the contracting agency with the final determination of the renegotiation, the more knowledge the renegotiator has.

If you call in somebody who is unfamiliar with the business, and unfamiliar with the contract, you just lose that much more time in educating him.

Now, I think the Ways and Means Committee is far better qualified to pass upon tax matters than any other group because they have made a specialty of it.

In the same way the man who makes contracts for tanks and who knows all about tanks, is far better able to talk with the manufacturer and weigh the yardstick that he turns out than I would be, knowing nothing in the world about the manufacture of any article.

That is the only reason. You must have people who have the knowledge of the product that is being turned out and people who have knowledge of the contract. That is far better than calling anybody else into the picture.

Mr. BYRNES. As I understand it, though, there are many areas of discretion that you have given to the Board, Mr. Chairman, discretion in determining what is equity as far as profit is concerned.

I am wondering to what extent knowledge of all the intricacies of production is required in determining whether or not this fellow got a better deal that he should have gotten. It probably has not created any difficulty in the past to have this close relationship, and I do not propose this as a question on which we should do any quibbling, but I did want to inquire, for my own information, why there was this direct relationship—and you probably have given the answer to it.

Mr. VINSON. Of course, I do not want to give the impression that it is absolutely necessary that the man who makes the contract be the man who carries on the renegotiation. But as long as we do have a close contact between the people originating the contract and those that renegotiate it, it is much better.[1]

It is also pointed out by some, that, since the Secretary of Defense is ultimately responsible for the procurement of defense material, he should also be ultimately responsible for renegotiation, in order that each aspect of the overall procurement activities may be conducted in such manner as to avoid inconsistencies and to promote the interests and objectives of the national defense program.

It is pointed out that the change suggested would retain the independence of the Board from the contracting officials of the Departments of Army, Navy, and Air Force, but would nevertheless move in the direction of accomplishing the objectives just discussed.

[1] Hearings before the Committee on Ways and Means on H.R. 9246, 81st Cong., 2d sess., p. 39 (August 1950). The proposed legislation with respect to which Congressman Vinson was the sponsor and to which the quoted remarks were directed did not create the Renegotiation Board as an independent establishment in the executive branch of the Government or prevent it from delegating its authorities to officials in the contracting agencies, as is the case under sec. 107 of the 1951 act.

B. Reporting Requirements

(1) PRESENT LAW

Pursuant to section 114 of the act, added in 1956, the Board is required to submit to Congress on or before January 1 of each year "a complete report of its activities" for the preceding year ending on June 30. The report is required to include information relating to (1) personnel of the Board, (2) administrative expenses of the Board, (3) statistical data relating to contractors' filings and to the conduct and disposition of those filings and filings made in previous years, (4) principal changes made by the Board in its regulations and operating procedures, (5) renegotiation cases disposed of by and pending before the Tax Court and other courts, and (6) other information the Board deems appropriate.

(2) DISCUSSION

Certain questions have arisen in connection with the annual reports required of the Board, a few of which will be discussed here.

First, although the act requires that the annual reports be a report of the Board's activities, the Board, in section V of each of its annual reports, sets forth statistical data relating to certain voluntary refunds and price reductions. Such voluntary refunds and price reductions are not determinations of excessive profits made by the Board. The fact that the amount of such refunds and price reductions are set forth in a report which is required to be a report of the Board's activities, and the fact that the amount thereof is included in a figure labeled "net recoveries," raises the implication that the amount of such refunds and price reductions is directly attributable to the activities of the Board. As is discussed further below,[2] this implication is erroneous. It would seem, therefore, that if the amounts of such refunds and price reductions are to be reported, they should be segregated from the figures relating to determinations of excessive profits and that the figures relating to the probable Federal income tax credit should also be segregated as between determinations of excessive profits and voluntary refunds and price reductions.

Second, questions have occasionally arisen concerning information reported by the Board in section VI of its annual reports, relating to orders and appeals to the Tax Court. Specifically, the question sometimes arises as to the dollar amount of determinations of excessive profits made by the Board in any given year and prior years which has been made the subject of actions before the Tax Court and other courts. Such information would be helpful, and would appear only to require the reporting of information which is now at the Board's disposal.

[2] See sec. 8 below.

SECTION 7. RELATED PROFIT LIMITATIONS

A. Vinson-Trammell and Merchant Marine Act Profit Limitation Provisions

(1) PRESENT LAW

The Vinson-Trammell [1] and Merchant Marine [2] Acts contain provisions which limit profits on certain Government contracts (and related subcontracts) for the construction of naval vessels and of aircraft to fixed percentages of contract price. The Vinson-Trammell Act provisions require that profits derived from contracts with the military departments (or on related subcontracts) for the construction of aircraft and of naval vessels be repaid to the Treasury Department to the extent that they exceed 10 percent of contract price, in the case of vessel construction contracts, or 12 percent of contract price, in the case of aircraft construction contracts. The Merchant Marine Act provisions require that profits derived from contracts with the Federal Maritime Administration or Board for the construction of vessels (or from related subcontracts) be repaid to the Administration or Board to the extent they exceed 10 percent of contract price. For the provisions of these statutes and related materials, see Appendix H.

The application of these profit-limitation provisions is now suspended by section 102(e) of the Renegotiation Act to the extent provided therein. That section provides that, "notwithstanding any agreement to the contrary, the profit-limitation provisions" of the Vinson-Trammell and Merchant Marine Acts "shall not apply * * * to any contract or subcontract [3] if any of the receipts or accruals therefrom are subject to this title or would be subject to this title except for the provisions of section 106(e)" (relating to exemption for standard commercial articles and services). That portion of section 102(e) which provides that the Vinson-Trammell and Merchant Marine Acts profit limitations shall not apply to any contract receipts or accruals which "would be subject to [the Renegotiation Act] except for the provisions of section 106(e)" of the act (relating to the exemption for standard commercial articles and services), was added in 1955.[4] This addition represents a compromise between the House version of the act, which would have made those profit limitations inapplicable to receipts or accruals which would have been subject to the Renegotiation Act but for any of the exemptions provided under section 106 of the Renegotiation Act,[5] and the Senate version which contained no such provision.[6]

[1] Vinson-Trammell Act of 1934, as amended, 48 Stat. 503 (1934), 10 U.S.C. 7300.
[2] Sec. 505(b) of the Merchant Marine Act of 1936, 49 Stat. 1958, as amended, 58 Stat. 920 (1944), 46 U.S.C. 1155(b).
[3] The provisions of sec. 102(e) of the Renegotiation Act make the profit-limitation provisions of the Merchant Marine Act inapplicable to the extent provided only in the case of contracts or subcontracts entered into after Dec. 31, 1950.
[4] Public Law 216, 86th Cong., as amended by Public Law 870, 84th Cong.
[5] See sec. 2 of H.R. 4904, 84th Cong., 1st sess.; H. Rept. 450, Apr. 27, 1955, p. 3.
[6] See S. Rept. 582, 84th Cong., 1st sess., June 20, 1955, pp. 2–3; see, also, conference report, H. Rept. 1188, 84th Cong., 1st sess., July 14, 1955, p. 3.

(2) QUESTIONS PRESENTED

Two questions concerning these statutory profit-limitation provisions arise in connection with renegotiation.

If the Renegotiation Act were permitted to expire, the profit limitation provisions of the Vinson-Trammell and Merchant Marine Acts would take effect, barring their repeal. Thus, any consideration of whether the Renegotiation Act should be repealed or permitted to expire raises the question of whether the Vinson-Trammell and Merchant Marine Acts profit limitations should be permitted to come into effect.

Despite the fact that the Vinson-Trammell and Merchant Marine Acts profit limitations are suspended by section 102(e) of the Renegotiation Act, the provisions of section 102(e) are drafted in such a way that those profit limitations may apply to certain contracts even while the Renegotiation Act is in effect. This raises the question of whether the Vinson-Trammell and Merchant Marine Acts profit-limitation provisions should be permitted to operate to limit profits so long as the Renegotiation Act is in effect.

Both of these questions raise the further question of whether such provisions are a desirable form of profit limitation.

(3) DISCUSSION

(a) *Desirability of Vinson-Trammell and Merchant Marine Act provisions as a form of profit limitation*

The consensus among those who have directed themselves to this question is that the Vinson-Trammell and Merchant Marine Act provisions are not a desirable form of profit limitation.[7] Perhaps the most important considerations cited in support of this position are that (1) they impair contractors' incentives to efficiency and tend to bring about a cost-plus-percentage-of-cost type of contracting, with resulting increases in the price paid by the Government for its procurements; (2) that they deter contractors subject to their provisions from entering into Government contracts; (3) that they are discriminatory in that they apply only to a few of the many types of contractors engaged in Government contracting; and (4) that any such uniform, flat-rate profit limitations are too arbitrary and inflexible in that they do not take into account the various factors which must necessarily be taken into account in determining proper levels of profit.

It should be noted in this regard that both the sponsor of this legislation, Congressman Vinson, and representatives of the procurement agencies concerned have upon several occasions since 1945 sought its repeal.[8] The following excerpts from a letter written in 1947

[7] See, e.g., Report of the Joint Committee on Internal Revenue Taxation Relating to Renegotiation. S. Doc. 126, 84th Cong., 2d sess., May 31, 1956, pp. 18–19.

[8] In November 1945, Congressman Vinson, chairman of the House Naval Affairs Committee, introduced a bill, H.R. 4622, to repeal the profit limitation provisions of the Vinson-Trammell Act. This bill was favorably supported by reports from the War, Navy, and Treasury Departments but failed to receive any extensive consideration by the 79th Congress. Subsequently, a new bill, H.R. 3051, was introduced in the 80th Congress at the specific request of the Department of the Navy, providing for the repeal of the Vinson-Trammell Act profit provisions. This bill was favorably reported by the House Armed Services Committee unanimously on June 20, 1947, and was promptly passed by the House. It was then favorably reported unanimously from the Senate Committee on Armed Services on June 19, 1947, but was lost in the logjam of legislation at the end of the session of Congress.

The enactment of the new Renegotiation Act in 1948 had the effect of making further consideration of the repeal bill, H.R. 3051, at that particular time, entirely unnecessary because the area of application of the Vinson Act profit-limitation clause had been almost entirely eliminated. The enactment of legislation repealing the Vinson Act provisions became of almost academic interest and no final Congressional action was taken on the bill H.R. 3051.

to the Speaker of the House by the then Secretary of the Navy are of interest in this connection:

> It should be noted here that the existing profit-limitation provisions of the Vinson-Trammell Act apply only to shipbuilding and aircraft manufacturing industries. Manufacturing enterprises unrelated to these two industries are not subject to such limitations; hence, an unjustified discrimination against these two major industries exists. Moreover, rigorous enforcement of the profit limitations requires complicated and costly bookkeeping by contractors and subcontractors and the maintenance by the Government of a large additional number of auditors and examiners. Problems as to the commercial overhead necessitate an audit of all the commercial work performed by a contractor.
>
> * * * * *
>
> Of the greatest concern to the Navy Department is the danger that if the profit-limitation provisions of the Vinson-Trammell Act are retained there will be serious interference with peacetime procurement. The fact that the shipbuilding and aircraft manufacturing industries are singled out may tend to discourage producers from entering these two fields in the Navy's interest. The burden of bookkeeping thrust upon the contractor and subcontractor has, in the past, made them reluctant to enter into contracts or subcontracts with the Navy. This danger is especially acute in such fields as aeronautics and ship components where there is a large civilian outlet for such products and it is apparent that such contractors will prefer to deal exclusively in civilian fields which are free from the burdens of the profit-limitation provisions imposed by existing law.
>
> It is particularly important to note that the profit-limitation provisions adopt a flat percentage limitation as the means of control. This is not an appropriate or successful technique for limiting profits as it takes no account of the amount of invested capital which must be carried by a particular contractor nor of the fact that in different lines of business the same volume of sales may require widely different amounts of capital. A percentage limitation does not allow appropriate consideration to be given to the nature of the articles purchased, the difficulties of producing them, or the number bought. Control by a percentage of the contract price is dangerous because an allowable increase in the contract price provides a larger allowed net profit, so that the contractor and subcontractor are provided with statutory incentive to inflate the contract price. The June 1940 amendment to the Vinson-Trammell Act, provided a serious temptation for contractors and subcontractors to inflate both their contract price and their actual costs of performance. No stimulus was afforded such contractors for savings in costs, but under the June 1940 amendment, the contrary was true. In some respects, the profit-limitation provisions reduce all contracts to a cost-plus-a-percentage-of-cost

basis—a mode of contracting long since recognized as undesirable.

* * * * *

The difficulties created by the Vinson-Trammell Act are by no means offset by any real limitation on profits as a result. As of the beginning of last year, less than $8 million excess profits were recaptured under the act, although $131 million of alleged costs were in fact disallowed by the Compensation Board. Further, because the act has narrowed competition very materially by discouraging contractors from dealing with the Navy, it may well be that the net result has been to increase costs to the Navy.

One of the aims of the Vinson-Trammell Act was to establish a yardstick for the aircraft industry at a time when that industry was undergoing tremendous expansion. The industry has now reached such a stage of competitive development and has acquired such knowledge concerning the costs involved, that the maintenance of a naval yardstick is no longer necessary. Competition between various private plants will tend to result in economy of Government procurement.

The Joint Committee on Internal Revenue Taxation in the reports of its 1955 study of renegotiation also made the following statement with respect to these statutory profit-limitation provisions:

> This uniform flat percentage profit limitation legislation was opposed by the military departments and the War Production Board just prior to the adoption of renegotiation in World War II. Included in the arguments against it were that it places contracts on a cost-plus basis; that the rate of profit should be related to the contribution and performance of the contractor instead of to a flat statutory percentage; that allowing a uniform percent of profit on gross sales is unfair as applied to different types of business, where the same volume of sales may involve widely different amounts of capital, skill, and work, levels of subcontracting, and other differences; and that it is unfair in treating alike those contractors who use Government facilities, those who are financed by the Government either through advance payments, direct loans, or cost-plus-fixed-fee contracts, and others who use their own facilities and capital.
>
> The present Vinson-Trammell provisions do not seem to be an appropriate substitute for renegotiation.[9]

(*b*) *Desirability of permitting Vinson-Trammell and Merchant Marine Act profit limitations to apply while renegotiation is in effect*

If the Vinson-Trammell and Merchant Marine Act profit limitations are considered to be undesirable forms of profit limitations, that consideration settles the question of whether they should be permitted to operate while the Renegotiation Act is in effect.

Even if it is not conclusively determined that these statutory profit limitations are undesirable, there are other considerations which direct that they not be permitted to operate while the Renegotiation

[9] Id., p. 19.

Act is in effect. At the practical level, there is the very important consideration that if a contractor is required in the course of the renegotiation process to refund profits out of receipts and accruals which are derived to any extent from contracts which are also subject to the Vinson-Trammell or Merchant Marine Act limitations, the renegotiations refund must be attributed to individual contracts, since such refunds must be treated as reductions in price for purposes of applying the Vinson-Trammell and Merchant Marine Act limitations. Since these limitations apply on a contract-by-contract basis, while renegotiation is generally required to be conducted on an aggregate fiscal-year basis—i.e., with respect to receipts and accruals in a fiscal year on all renegotiable contracts—the portion of a renegotiation refund attributable to a particular contract should not be able to be determined if the Board and the contractor do not agree to renegotiate on a separate-contract basis and if the Board carries out its statutory mandate not to renegotiate a particular contract. These difficulties were the principal considerations, but not the only consideration, which led Congress to adopt the provisions contained in section 102(e) of the act which suspended the Vinson-Trammell and Merchant Marine Act profit limitations.[10]

There are also policy considerations against permitting the Vinson-Trammell and Merchant Marine Act profit limitations to operate while the Renegotiation Act is in effect. The nature of renegotiation is such that any decision on the part of Congress to leave the renegotiation type of profit limitations in effect necessarily constitutes a decision on the part of Congress that the Vinson-Trammell and Merchant Marine Act-type profit limitations should not also be in effect. There is implicit in renegotiation the policy decisions (1) that permissible levels of profits should not be fixed by reference to uniformly applicable fixed percentages of sales, but must be set by flexible standards applied on a case-by-case basis; (2) that profit limitations should be administered by an agency independent of the procurement agencies; (3) that profits recaptured through profit-limitation provisions should revert to the Treasury and not to the procurement agencies involved; and (4) that profit limitations should be applied on an overall or fiscal-year basis rather than on a completed-contract basis. Regardless of the merits of these policy decisions implicit in renegotiation—and doubts have been expressed as to them, as has been indicated elsewhere in this study—those policy decisions are inconsistent with the policies inherent in Vinson-Trammell and Merchant Marine Act-type limitations.

The combination of the considerations just cited led Congress to adopt the provisions, contained in section 102(e) of the act, which suspend the profit-limitation provisions of the Vinson-Trammell and Merchant Marine Acts.

Given these considerations, it is interesting to find that in the past there have occasionally been suggestions that contract receipts or accruals which are exempted from the act under section 106, or which are subject to the act but not subject to renegotiation by virtue of being below the minimum amount of "floor" prescribed by section 105(f) should be subject to the Vinson-Trammell or Merchant Marine Acts profit limitations, or to certain comparable nonstatutory profit

[10] See hearings before the Ways and Means Committee on H.R. 9246, Aug. 3, 1950, 81st Cong., 2d sess., p. 56.

limitations discussed further below.[11] The suggestion that contract receipts and accruals be subject to such profit limitations when they are subject to the act but below the "floor," was rejected by Congress in 1959. This action of Congress seems proper, for such a suggestion would lead to the complexities of attributing renegotiation refunds to individual contracts encountered under earlier renegotiation statutes which were precisely the complexities that Congress sought to avoid in 1951 when it adopted the present provisions of section 102(e).[12] A still more important shortcoming of such suggestions, however, is that they ignore the fact that the imposition of Vinson-Trammell-type profit limitations is fundamentally inconsistent with the congressional policy decisions already described which are implicit in the continuation of the Renegotiation Act.

In the view of the considerations described which led to the adoption of the suspension provisions of section 102(e), and in view of the fact that suggestions for legislative change have occasionally been made which ignore those conditions, it may be desirable to consider strengthening the provisions of section 102(e) by striking the words "section 106(e)" wherever they appear, and by inserting in lieu thereof the words "section 106". This would have the effect of preventing the Vinson-Trammell and Merchant Marine Act profit-limitation provisions from being applicable, during the period that renegotiation is in effect, to receipts or accruals from any contract exempted from the Renegotiation Act, instead of to just those receipts and accruals exempt under the standard commercial article and services exemption.

B. Certain Nonstatutory Profit Limitations

(1) present law

Although section 102(e) of the Renegotiation Act suspends the special profit limitations imposed by the Vinson-Trammell and Merchant Marine Acts on contracts for the reconditioning or construction of ships, there are at least three instances in which some procurement agencies have nevertheless imposed special profit limitations on ship repair or construction contracts. These profit limitations are not imposed pursuant to any statutory requirement, but are imposed pursuant to regulatory or other administrative action of the procurement agency involved, and are referred to as "nonstatutory" profit limitations.

Federal Maritime Administration/Maritime Board ship repair contract profit limitation.—The Federal Maritime Administration and the Federal Maritime Board (agencies in the Department of Commerce) require that all ship repair contracts contain a clause, applicable to subcontracts as well as prime contracts, which requires that all profit in excess of 10 percent of contract price be repaid to the Maritime Administration (or Board). The clause thus required to be inserted is virtually identical to the clause required by the now-suspended profit-limitation provisions of the Merchant Marine and Vinson-Trammell Acts to be inserted in contracts subject to those acts, and the computation of profits for purposes of this statutory limitation

[11] For example, see hearings before the Finance Committee on H.R. 7086, 86th Cong., 1st sess., p. 5. See also S. Rept. 582, 84th Cong. 1st sess., p. 3.

[12] See hearings before the Ways and Means Committee on H.R. 9246, 81st Cong., 2d sess. Aug. 2, 1950, p. 56.

is governed by the same regulations that were issued for purposes of the Merchant Marine Act limitations. For the provisions of this clause and related materials, see Appendix I.

Federal Maritime Administration/Maritime Board ship construction contract profit limitations.—The Federal Maritime Administration and Maritime Board have also required that ship construction contracts having escalation provisions contain a clause which provides that escalation payments otherwise required under the contract shall not be paid to the extent they would yield the contractor a profit in excess of 10 percent of contract price. The computation of profits for purposes of this nonstatutory limitation is governed by the same regulation that governs computation of profits for purposes of the suspended Merchant Marine Act profits limitations. For the provisions of this clause and related materials, see Appendix I.

Navy ship construction contract profit limitations.—The Navy Department also follows the practice of inserting in its vessel construction contracts which contain the escalation article (art. 6) a clause which permits the contracting officer to deny any escalation payment otherwise agreed upon and required under the contract if he finds that such payment "is not required * * * to enable the contractor to earn a fair and reasonable profit" under the contract. For the provisions of this clause and related materials, see Appendix I.

(2) QUESTIONS PRESENTED

As in the case of the Vinson-Trammell and Merchant Marine Act profit-limitation provisions, the principal questions presented with respect to the nonstatutory profit limitations under discussion are whether they are a desirable form of profit limitation and whether they should be permitted to operate while renegotiation is in effect.

(3) DISCUSSION

The considerations cited above in the discussion of the Vinson-Trammell and Merchant Marine Act profit-limitations provisions [13] are equally relevant to the question whether these nonstatutory limitations are a desirable form of profit limitation, and to the question whether they should be permitted to operate while the Renegotiation Act is in effect.

Thus, the view that the Vinson-Trammell and Merchant Marine Acts profit limitations are undesirable forms of profit limitation in that they discriminate against one industry is equally applicable to all three of these nonstatutory profit limitations. Moreover, the view that the statutory provisions are undesirable in that they tend to bring about the forbidden cost-plus-percentage of cost (CPPC) type contracting also appears to be particularly applicable to these nonstatutory limitations. One case brought to light in the course of this study, which is particularly relevant in this regard, involves a situation where a Navy Department contracting officer denied a large escalation payment pursuant to article 6(e) of the renegotiable ship construction contract, with the following explanation:

> The profit earned under this contract, without adjustment for escalation, amounts to in excess of $ * * *, or about

[13] See supra, p. 46.

> * * * *percent of costs*. If the requested adjustment were made, a profit in excess of $ * * *, or more than [* * *] *percent of costs* would result. Under article 6(e), of the special provisions of contract NObs- * * *, the contracting officer may deny any escalation adjustment, otherwise in accordance with article 6, which is not required to enable the contractor to earn a fair and reasonable profit under the contract. Considering all relevant factors, the profit already accrued is considered fair and reasonable within the meaning of article 6(e). Accordingly, your claim for an upward adjustment in the price of contract NObs- * * * is denied." [Emphasis supplied.]

The material quoted, particularly the italicized portions thereof, clearly indicates that the allowable level of profit on the contract was fixed by reference to a specified percentage of costs actually incurred, which is precisely the method by which profits are fixed in a CPPC-type contract. Because this method of fixing profits adversely affects the contractor's incentive to reduce costs, and in fact gives him an incentive to increase costs so as to increase his profits, the CPPC method of contracting is now forbidden by law.

Likewise, the considerations which led Congress to suspend the profit limitations of the Vinson-Trammell and Merchant Marine Acts while the Renegotiation Act is in effect are equally applicable to these nonstatutory profit limitations.[14] Thus, it is important to note that the nature of renegotiation is such that any decision on the part of Congress to leave the renegotiation type of profit limitations in effect necessarily constitutes a decision on the part of Congress that these nonstatutory profit limitations should not also be in effect. There is implicit in renegotiation the policy decisions (1) that permissible levels of profits should not be fixed by reference to uniformly applicable fixed percentage of sales, but must be set by flexible standards applied on a case-by-case basis; (2) that profit limitations should be administered by an agency independent of the procurement agencies; (3) that profits recaptured through profit-limitation provisions should revert to the Treasury and not to the procurement agencies involved; and (4) that profit limitations should be applied on an overall or fiscal-year basis rather than on a completed-contract basis. Regardless of the merits of these policy decisions implicit in renegotiation—and doubts have been expressed as to them, as has been indicated elsewhere in this study—those policy decisions are inconsistent with the policies inherent in these nonstatutory limitations.

The fact that these nonstatutory profit limitations are in conflict with policy decisions implicit in renegotiation is particularly evident in the case of the requirement of the Renegotiation Act that excessive profits be refunded to the Treasury and not to any procurement agency. During the course of this study, cognizant procurement officials of the Navy Department and of the Federal Maritime Administration and Board have repeatedly indicated that one of their principal reasons for using, and wanting to continue to use, these nonstatutory profit limitations in the case of contracts which are also subject to renegotiation, is that under them any savings effected by the limitations accrue to the benefit of their agencies, whereas under renegotiation the profits recaptured go to the Treasury. In view of

[14] See supra, p. 46.

this, it is evident that the procurement agencies have been using, and desire to continue using these nonstatutory profit limitations to achieve results which are precisely those which it is the policy of the Renegotiation Act to prevent.

The Senate, in 1959, adopted an amendment to the bill extending the Renegotiation Act which was sponsored by the Finance Committee and which reads as follows:

> Sec. 2. Non-statutory profit limitation provisions
>
> Section 104 of the Renegotiation Act of 1951 (50 U.S.C., app. sec. 1214) is amended by adding at the end thereof the following new sentences: "No provision limiting the amount of profits shall be inserted by the Secretary of any Department in any contract or subcontract the receipts or accruals from which are subject to this title, or would be subject to this title except for the provisions of section 106, other than the provision required by the first sentence of this section; and any such other provision in any such contract or subcontract, whether entered into before, on, or after the date of the enactment of this sentence, shall have no force or effect. The preceding sentence shall not apply to any incentive provision, to any provision for redetermination or similar revision of the contract price, or to any provision for price escalation which operates without regard to the amount of profits under the contract or subcontract." [15]

The amendment was eliminated in conference, but the conference report indicated that no inference was to be drawn from the fact it was not made a part of the conference agreement and directed that the amendment be made the subject of this study.

The considerations which led to Senate adoption of the amendment were set forth in an explanation submitted by Senator Byrd in the course of Senate floor action on the amendment. The considerations set forth in that explanation, which are set forth below, are consistent with those which have been developed previously in this study and would appear to be as applicable now as they were then.[16]

> This amendment is designed to prevent the Government agencies from employing certain profit limitation devices which undermine the will of Congress as expressed in the Renegotiation Act of 1951.
>
> There are at least three instances in which administrative agencies, through regulatory action, are subjecting contracts to these profit limitations even though the same contracts are subject to renegotiation.
>
> (1) The Federal Maritime Administration (and Federal Maritime Board) requires that all ship repair contracts contain a clause (art. 41) which requires a contractor to repay to the Federal Maritime Administration any profits on the contract which exceed 10 percent of the contract price.
>
> (2) The Navy Department follows the practice of inserting an escalation clause (art. 6(e)) in ship construction contracts which permits the contracting officer to deny the agreed upon escalation payments if he finds that the payment "is not required * * * to enable the contractor to earn a fair and reasonable profit" under the contract.
>
> (3) The Federal Maritime Administration (and the Federal Maritime Board) also employs an escalation clause in shipbuilding contracts (sec. 5) which provides that escalation payments will not be made if the payments would yield the contractor a profit of more than 10 percent of the contract price.
>
> A brief consideration of the nature of renegotiation shows that these types of profit limitations are inconsistent in several respects with the type of profit limitation decided upon by Congress when it adopted renegotiation. The Renegotiation Act empowers the Government, acting through an independent agency known as the Renegotiation Board, to require a contractor to repay to the U.S. Treasury any profits earned on renegotiable

[15] H.R. 7086, 86th Cong., 1st sess. (1959).
[16] 105 Congressional Record 11562–11563.

Government contracts which, in the judgment of the Board, are excessive for the fiscal year involved. This type of profit limitation differs radically from that involved in the provisions described above.

(1) Renegotiation is not conducted on a contract-by-contract basis but on an overall fiscal year basis. In other words, if a contractor holds several renegotiable Government contracts the question of whether he has earned excessive profits is not determined by reference to each individual contract but is determined with respect to his aggregate profits during a fiscal year on all the contracts, with the result that losses or deficiencies in reasonable profits on one contract may be offset against excessive profits on another contract.

(2) In the renegotiation process, the determination of excessive profits is not made by a contracting officer or any other official in the contracting agency, but is made by an independent official on the Renegotiation Board. The Renegotiation Act itself fortifies this procedure by prohibiting the Board from delegating any of its powers to any person in any agency who is responsible for making procurement contracts for that agency.

(3) Under renegotiation, amounts which are determined to be excessive profits are required to be paid into the surplus fund of the U.S. Treasury and not to the agency which made the contract. The requirement that excessive profits be paid to the Treasury rather than to the contracting agency involved has the desirable effect of preventing contracting officers from relying on renegotiation or any other after-the-fact profit limitation device in establishing the original terms of the contract.

(4) Renegotiation does not establish an arbitrary flat rate profit limitation on all contracts but requires the Renegotiation Board, in determining excessive profits, to take into account numerous factors which may vary among different contracts and contractors.

When Congress adopted renegotiation, it had before it a considerable amount of prior experience with other forms of profit limitations similar to some of those described above which are currently being employed by regulatory action of administrative agencies, and in view of the various shortcomings of such other forms of profit limitations it rejected them in favor of renegotiation. For example, the Merchant Marine Act of 1936 and the Vinson-Trammell Act of 1934 contained flat rate profit limitations of 10 percent and 12 percent of the contract price in the case of ship construction and aircraft construction contracts, respectively, and required contractors holding such contracts to repay any profits in excess of the limit to the contracting agency involved. Congress provided, however, in section 102(e) of the Renegotiation Act that the profit limitation provisions of those two acts be suspended so long as renegotiation is in effect. Despite the fact that Congress expressly indicated its intention to suspend such other types of profit limitations and despite the fact that the other types of profit limitations described above are inconsistent with the renegotiation process, some of the administrative agencies have, in effect, nullified the congressional policy by employing profit limitation devices other than renegotiation, even though the contracts to which the other profit limitations are applied are, at the same time, subject to renegotiation.

In order to prevent the renegotiation authority from being weakened and to prevent the will of Congress from being circumvented by such administrative action, this amendment prohibits use of the type of profit limitations described above so long as the Renegotiation Act is in effect.

APPENDICES

APPENDIX A

Proposals Received for Changes in the Act

The various proposals for changes in the act which have been received in the course of this study are summarized in this appendix. These proposals have been made available to the Renegotiation Board for its review and comment, and the comments received from the Board with regard to these proposals are set forth in a letter dated December 21, 1961, from the Chairman of the Renegotiation Board to the chairman of the Joint Committee on Internal Revenue Taxation. This letter is reproduced below as Appendix B of this document.

A. Exemptions

(1) proposed changes in present exemptions

(*a*) *Stock-item exemption.*—It has been proposed that the "stock-item" exemption now provided under regulations be incorporated in the statute as a mandatory exemption.

(*b*) *Standard commercial article exemption.*—It has been proposed by several groups that, for purposes of establishing a class of articles constituting a "standard commercial class" under section 106(e)(4)(G), articles classified in a group by a contractor under classifications which accord with standard accounting practices either of the contractor or of his industry be treated as a standard commercial class. One such proposal would provide that if the articles in these classes are stocked or on price lists, they should be considered a class of articles: (a) when the classifications are consistent with "sound industry practices"; (b) when it is not administratively practical from an accounting standpoint to maintain records on each article; or (c) when the price of all such articles sold is not in excess of the best user-customer price for like quantity. The sponsors of this proposal assert that the Board's narrow interpretation of a class of products has made it administratively unfeasible to apply the exemption, and that the restrictive interpretation placed by the Board on the term "standard commercial class" has frustrated the intent of Congress.

It has also been proposed that the standard commercial exemption be amended to add an exemption for a "competitive manufactured product," which would be defined as an article "manufactured and openly offered for sale by one person which performs substantially the same function in substantially the same way as * * * articles which are manufactured and openly offered for sale by two or more other independent persons", but an article would be excluded from the definition of competitive manufactured product (1) if it were developed

under contract with the Government, or (2) if it had not been sold by the contractor within the fiscal year to at least three persons independent of each other and of the contractor. This proposal is based on the consideration that, although the present law exemption was enacted for the purpose of exempting sales of articles with respect to which competition is present, there nevertheless are numerous cases to which the act applies even though there is competition.

It has been further proposed by several groups that the exemption for standard commercial services be extended to bona fide manufacturers' representatives. The reason given for this proposal is that competition is in fact present in the case of such services and that the presence of such competition is indicated by the fact that the manufacturers who are the principals of such representatives may qualify for the standard commercial article and services exemption.

It has also been proposed that the 35-percent-of-sales test be made inapplicable in cases where the exemption is "self-executing," that is, in the case of standard commercial articles. The reason given for making the 35-percent-of-sales test inapplicable in cases where the exemption is "self-executing" is that the self-executing exemption now granted for standard commercial articles has been so narrowly construed that it is virtually useless for many companies which have product lines including a broad catalog of items with slight differences and do not keep records coinciding with the regulatory distinctions.

(*c*) *New durable products exemption.*—It has been proposed that the act be amended to require the Board to publish in its regulations a list of all new durable products recognized by it as being eligible for this partial mandatory exemption.

(2) PROPOSED NEW EXEMPTIONS

(*a*) *Fixed-price contracts.*—Several proposals have been submitted which would exempt fixed-price contracts from the application of the act. For example, one proposal would exempt formally advertised negotiated fixed-price contracts. Another proposal would exempt all fixed-price contracts. Another one would exempt formally advertised negotiated fixed-price contracts. Another proposal would exempt firm-fixed-price contracts for which reasonableness of price has been established by competition.

A further proposal would exempt "any firm-fixed-price contract or subcontract (with or without price escalation), for which stable and reasonably definite specifications are available and for which fair and reasonable pricing can be achieved." Under this latter proposal, pricing would be deemed fair and reasonable if "adequate competition" made" initial quotations effective", or if "prior purchases of the same or similar supplies or services provided a reasonable price comparison", or "if any other reasonable basis for price determination is presented." Under this same proposal any firm-fixed-price contract or subcontract would be presumed exempt "unless the contracting officer makes a written determination, at the time the contract or subcontract is awarded, that stable and reasonable definite specifications are not available or fair and reasonable pricing cannot be achieved."

The groups favoring exemption of fixed-price contracts do so on the basis that the procedures for making and administering such

contracts are designed to produce a price which is not likely to result in "excessive" profits.

(*b*) *Incentive contracts.*—Several proposals have been submitted which would exempt incentive-type contracts. One such proposal would exempt incentive-type contracts placed by formal advertising. The reason assigned for exempting incentive-type contracts from renegotiation is that renegotiation defeats the very purpose of this type of contract in that it deprives the contractor of the profit deliberately provided him by the procurement authority under the incentive provisions of the contract. The problem which has been raised by opponents of such proposals, however, is that it is difficult to determine the extent to which profits eliminated as a result of renegotiation are in fact those resulting from efficiency of the contractor in controlling costs, as distinguished from profits resulting from an underrun of unrealistically high-cost estimates.

(*c*) *Price redeterminable contracts.*—A majority of the groups submitting comments in connection with this study favor an amendment to the act which would exempt therefrom all price-redeterminable contracts. In connection with this proposal, it has been pointed out that the price-redeterminable type of contract provides many of the protections against unreasonable profits which are provided by renegotiation.

(*d*) *Product exemptions.*—Several proposals would exempt all sales of products where costs have been found by the Government to be reasonable. Another proposal would exempt contracts for all products except those affirmatively designated by the procurement agency as being product categories which, in their judgment, should be subject to renegotiation. (For related exemptions, see below concerning proposed exemption by action of procurement agency.) These proposals are based on the premise that renegotiation should be restricted in its application to contracts for those products with respect to which there are the problems cited by the proponents of renegotiation as justification for its need—that is, problems such as the absence of the prior production and cost experience existing in the case of the new and complex items the Government is required to procure for its defense program.

(*e*) *Exemption for contracts according to method of placement.*—Several different proposals would provide for the exemption of contracts according to the method of placement. For example, most of the groups favoring additional exemptions would amend the act to exempt all contracts awarded on an advertised bid basis. Another proposal would exempt negotiated contracts which are placed competitively. A third proposal would restrict the act to certain types of procurement where reasonable competition does not exist. These different proposals are based on the consideration that some of the circumstances which must be present in order to justify placement of the contract under that method are sufficient in themselves to protect the Government against the possibility of unreasonable profits. Thus, it is stated that where the contract is placed by competitive advertised bidding, the presence of competition among the bidders will be sufficient to protect the Government against unreasonable prices and profits.

(*f*) *Small business contract exemption.*—It has been suggested from time to time that the act be amended to exempt all independent and non-affiliated contractors and subcontractors from renegotiation which

qualify as small business under criteria established by the Small Business Administration. These proposals are justified on the grounds that small businesses are peculiarly in need of relief from the burdens of compliance with renegotiation and from the financial uncertainties attendant upon the contingency of having to refund unknown amounts of profits to the Government, and that it is important to the national defense effort as well as to the economy in general that small businesses be assisted and encouraged to enter into contracts with the Government.

(*g*) *Exemption for small contracts.*—It has been recommended that section 106(a) of the act be amended by adding a new paragraph (10) which would exempt "Any subcontract for an aggregate amount of $5,000 or less, provided such subcontracts were customary in the preceding fiscal year, and that of the aggregate receipts or accruals in the fiscal year sales to any one contractor or subcontractor do not exceed 20 percent of such aggregate receipts or accruals." The reason given for the proposed exemption is that, in cases such as those described, the clerical cost and burden of renegotiation on the seller is considerable and that some relief is needed.

(*h*) *Exemption for minimum amount renegotiable.*—Several proposals would treat the minimum amount specified by section 105 of the act as an exemption rather than as a "floor." These proposals are mentioned further below in connection with the proposals concerning the statutory "floor."

(*i*) *Increase of minimum amount refundable.*—As is discussed further below in connection with the proposals relating to the statutory "floor," it has been proposed that the minimum amount refundable be increased to at least $100,000 in cases to which the $1 million "floor" is applicable.

(*j*) *Exemption for certain manufacturers' representatives.*—It has often been proposed that commissions of "bona fide manufacturers' representatives" (as defined by certain Defense Department regulations) be exempted from the act. Other proposals would exempt, or require that special recognition be given to, commissions paid to independent sales representatives which are at rates not in excess of rates for commissions on non-Government sales. Several considerations have been put forth in justification of the proposal that commissions of "bona fide manufacturers' representatives" be exempted from the act. It is pointed out, for example, that the commissions of a sales representative who is retained as an *independent contractor* by a manufacturer may be subject to the act while the compensation of another person performing a similar sales function as an *employee* of a manufacturer is not subject to the act, but is included as a part of the manufacturer's costs.

(*k*) *Exemption for contract receipts reinvested in research and development or in facilities and equipment connected with national defense.*—It has been recommended that receipts and accruals be exempted to the extent the contractor or subcontractor expends or allocates the profits therefrom for research and development, or for facilities or equipment which have a direct connection with the national defense. This recommendation operates on the premise that since many have asserted the desirability of increasing private investment in research and development activities and facilities connected with the national defense, the way to do so would be to exempt profits from renegotia-

tion in such cases rather than to require that they be repaid to the Government.

(*l*) *Exemption by action of procurement agency.*—It has been proposed that the act be amended to provide authority for the procurement agency to exempt from renegotiation, by contractual provision "any contract with respect to which it believes that fair and reasonable pricing can be achieved or will be achieved through the operation of contractual provisions." Under this proposal. the contractor would have to apply for the exemption, and in the event of a denial of his application, the denial would be required to take the form of a "determination in writing by the contracting officer that fair and reasonable pricing cannot be achieved, including the specific reasons for such determination." Under this same proposal the following factors would be taken into account as bearing upon the possiblity of achieving fair and reasonable pricing of a contract: (1) the extent of competition; (2) the existence of prior or other contracts for the same or similar product or services; (3) the availability of cost data; (4) previous experience with the contractor; (5) the length of time covered by the contract; (6) the type of contract, i.e., CPFF, fixed price, etc.; and (7) the existence of sufficiently stable and definite specifications. This proposal would also provide that any subcontractor, with the consent of the contracting officer, similarly be declared exempt from renegotiation. This proposal is based on the consideration that the coverage of the act now goes far beyond what is required to meet the conditions cited as requiring its continuance. It is stated in this connection that the procurement agencies are frequently in the best position to determine the adequacy of pricing arrangements and that they, therefore, should be permitted to exempt contracts where they believe reasonable pricing has been achieved in the provisions of the contract.

(*m*) *Waiver of exemption.*—It has been recommended from time to time that a contractor be permitted, at the time he files his annual renegotiation report, to waive for that year any exemption provided by the statute, whether it be mandatory or permissive. These recommendations are concerned with the fact that exemptions often operate to the disadvantage of the contractor in that losses or low profits on exempt contracts are not available to offset profits on nonexempt contracts.

B. Minimum Amounts Renegotiable—The Statutory "Floor"

Numerous proposals have been received to raise the present $1 million "floor" by varying amounts—for example, to $1.5 million, $2.5 million, $5 million, and $10 million.

Other proposals have been received which would treat the mimimum amount specified by section 105 of the act as an exemption rather than a "floor."

Still other proposals have been received which would raise the $25,000 "floor" now provided for contracts described in section 103(g)(3) to $100,000; that is, by a ratio equal to that by which the "floor" applicable to other contracts has been increased.

It has been proposed that the minimum refund of $40,000 now provided for by Renegotiation Board Regulations section 1460.5 be in

creased to at least $100,000 (that is, 10 percent of the present $1 million floor).

The proposals to raise the $1 million "floor" by various amounts are based largely on considerations to the effect that such an increase would relieve small businesses from the burdens and costs of compliance with renegotiation. It should be noted in this regard that this "floor" has been raised twice for similar reasons from the $250,000 originally provided in the 1951 act—first to $500,000 and later to the present $1 million.

The proposals to raise the $25,000 "floor" applicable to contracts described in section 103(g)(3)—that is, contracts held by certain brokers, manufacturers' agents, etc.—are based on similar considerations. Here, however, there is the additional consideration that although the "floor" applicable to other contracts has already been increased from $250,000 to $1 million, the $25,000 "floor" has not been correspondingly increased. In this connection, it has been stated that although a very large number of persons holding such contracts are required to file annual financial statements, only a very few of them are required to make renegotiation refunds.

The principal reason advanced for the proposal to treat the $1 million and $25,000 "floors" as exemptions is that it is inequitable for a contractor whose renegotiable sales are below the "floor" not to be renegotiated while the contractor having any amount of renegotiable sales above the "floor" is renegotiated on his sales below the "floor" as well as those above the "floor."

The reason given for the proposal to increase the minimum amount refundable to at least $100,000 in cases to which the $1 million "floor" is applicable is that excessive profits cannot be determined with the precision now implied by the $40,000 minimum on amounts refundable—that is, a precision of one-fourth of 1 percent of sales ($40,000/$1,000,000).

C. Departments Covered by the Act

Two proposals have been received which recommend that certain "fringe agencies" be excluded from coverage of the act. One would limit the coverage of the act to contracts let by the Department of Defense, and Departments of the Army. Navy, and Air Force. The second proposal would exclude the General Services Administration, the public works procurement of the Army Corps of Engineers, and the nonmilitary procurements of the Atomic Energy Commission.

D. Fiscal Year Basis of Renegotiation

Various proposals have been received which are concerned with certain problems arising out of the fact that renegotiation is conducted on an "aggregate" or "fiscal-year" basis. Nearly every group submitting comments in the course of this study has directed itself to these problems. The first problem raised—and the one which is much more important in the view of most—is that deficiencies in profits on renegotiable business for years before or after the year being renego-

tiated are not required by the law to be, and often are not in fact taken into account by the Renegotiation Board or by the Tax Court in determining whether profits for the year under review are excessive. The second problem concerns the treatment of losses—as distinguished from deficiencies in profits—for years other than the year being renegotiated. In this latter case, the problem raised is that although renegotiable losses from the 5 prior years may be carried forward to the year under review, no provision is made in the act for carrying back losses from years after the year under review.

With respect to subnormal profits or deficiencies in profits in years before or after the year under review, several different types of proposals have been made. One type of proposal, which for convenience may be referred to as a "factor approach," would require that deficiencies in profits for a certain number of prior and/or subsequent years be taken into account in determining whether profits under the year of review were excessive. One important variation of this approach, referred to as a "moving average," would provide that the amount of excessive profits for a fiscal year not be greater than the amount by which excessive profits for the 5-year period ending with the year under review (determined after combining the contractor's renegotiable sales and profits for such 5-year period) exceed the aggregate excessive profits determined for the preceding 4 years. Another variation would simply provide that there be taken into consideration deficiencies in profits on renegotiable business from the preceding 5 and succeeding 2 fiscal years. Still other variations would take into account a different number of years before and/or after the year under review, or would entirely exclude deficiencies for years after the year under review.

Another type of proposal, which may be called the "deficiency determination approach," would require the Board (or Tax Court), after tentatively determining that there are excessive profits for the year under review, to make a determination of the amount by which renegotiable profits are deficient in each of a specified number of years before and/or after the year under review, and to offset the amount of the deficient profits so determined against the amount of excessive profits tentatively determined for purposes of arriving at the amount of excessive profits finally to be determined for the year under review.

With respect to losses, the suggestion is simply that provision be made in the act for a 3-year carryback of renegotiable losses.

It appears to be agreed by all concerned that the conduct of renegotiation on a strict fiscal-year basis results in intolerable hardships and inequities. Thus, it is pointed out that a contractor in years other than the year under review may incur high start-up costs under a long-term contract, realizing deficient profits in those years and substantially higher profits in later years, and on an overall basis still operate at a reasonable level of profits or even at a loss. Similar situations may occur where there are not long-term contracts involved but where there are successive contracts for the production of a particular type of item. In such cases it would obviously be unfair to look at the year or years of high profits and determine that profits are excessive.

E. Statutory Factors

With respect to the statutory factors in general, it has long been stated that they are far too vague and general to serve as meaningful guides for determination of what profits are excessive. It is pointed out in this connection that the present factors were adopted in 1943 and have remained in the statute substantially unchanged since that time.

The first factor set forth in the act, which requires that "reasonableness of costs and profits" be taken into consideration has recently been singled out for criticism. It is stated in this connection that although "reasonableness of profits" is in reality the ultimate question to be determined, the Board has frequently placed its principal reliance in determining excessive profits on the factor of unreasonableness of profits. To prevent this from occurring, it has been recommended that the words "and profits" be deleted from this factor.

One group of proposals concerning the statutory factors appears in section 2 of the House-passed version of H.R. 7086 (86th Cong., 1st sess.), the bill which became the 1959 law providing for the most recent extension of renegotiation and for this study. The provisions of section 2 were stricken in the Senate and not restored in conference, but the report of the conference committee indicated that no inference was to be drawn from the fact that they were stricken by the Senate and also indicated that these provisions were to be included as subjects of this study. The provisions of section 2 of H.R. 7086, as passed by the House, read as follows:

> Sec. 2. Factors to be considered in determining excessive profits.
>
> (a) Contractual Pricing Provisions: Encouragement of Subcontracting to Small Business.—The second sentence of section 103(e) of the Renegotiation Act of 1951, as amended (50 U.S.C., App., sec. 1213(e)), is amended by striking out "and" before "economy in the use of materials", and by striking out "manpower;" and inserting in lieu thereof "manpower, contractual pricing provisions and the objectives sought to be achieved thereby, and economies achieved by subcontracting with small business concerns (as defined pursuant to section 3 of the Small Business Act);".
>
> (b) Use of Public and Private Capital.—Paragraph (2) of the second sentence of section 103(e) of such Act is amended to read as follows:
>
> "(2) The net worth, and the amount and source of public and private capital employed;".
>
> (c) Statement Furnished by Board.—Section 103(e) of such Act is amended by adding at the end thereof the following new sentence: "In any statement furnished by the Board pursuant to section 105(a), the Board shall indicate separately, but without evaluating separately in dollars or percentages, its consideration of, and the recognition given to, the efficiency of the contractor or subcontractor and each of the other foregoing factors."

F. Administrative and Judicial Procedure

(1) Criticisms received concerning Renegotiation Board and Tax Court procedure

(a) *Renegotiation Board procedure.*—Widespread dissatisfaction has been expressed with regard to present practice and procedure of the Board. Virtually every group submitting comments in connection with this study has directed complaints to the procedure of the Board, both at the statutory Board and regional board levels. These complaints include grievances with respect to almost every stage of the renegotiation procedure outlined above.

There are two essentially different types of grievances which have been stated with respect to Board procedure. One group consists of those which are attributable to the lack of statutory, administrative or judicial definition of the term "excessive profits." The other group consists of those attributable to the lack of certain procedural safeguards.

There are a variety of grievances relating to the lack of definition of the term "excessive profits." In this connection, it has been pointed out that although renegotiation has been in effect for a period of about 18 years, the Board has not publicly disclosed any standards which it employs in determining whether a profit is excessive. The result, according to many of the groups commenting, is that, because of the vagueness of the issues, the contractors have no way of knowing to what they should direct themselves in their oral and written presentations to the Board or to the Tax Court. Contractors state in this regard that the only way they have of knowing the matters to which they should direct themselves is for the Board members to state to them at refund meetings the questions and problems which they have in their minds. Contractors state that they therefore do not know in advance of the refund meeting the issues to which they should direct themselves. Contractors further state in this regard that Board members frequently do not advise them at refund meetings of the questions which they have in their minds with respect to the case and that, as a result, the contractor does not know *at any stage* of the renegotiation proceedings the matters to which he should direct himself.

The other grievances in this first group of problems—i.e., those related to lack of definition of excessive profits—centers around the inadequacy and lack of specificity of the written statements supplied the contractor by the Board with regard to the facts and reasons upon which the Board's determination of excessive profits is based. This condition is said to exist with respect to both the "Summary of Facts and Reasons" supplied by the Board under its regulations and the "Statement of Facts and Reasons" furnished pursuant to the statute. The implication of some of the criticism in this regard is that these statements are inadequate because the Board itself has not given sufficient attention to developing the standards which it considers relevant to disposition of a case.

Many of the grievances stated relate not to lack of standards for determining what profits are excessive but to the absence of traditional procedural safeguards. Thus one group of complaints seems to relate to the lack of established procedures for joinder of issues on, and resolution of disputes as to, questions of law and fact. Unlike proceedings before the courts, there is no requirement in the statute that the parties file a petition and answer, or that they make requests for findings of fact in order to frame issues on questions of law and fact. Contractors state that there are occasions in which there is in fact no joinder or resolutions of issues with respect to questions of law or fact which are important to disposition of the case. For example, one contractor advised that he was unable to get a conference at the regional board level, and experienced great difficulty getting a conference at the statutory Board level, on a question which related to whether certain costs could properly be allocated to renegotiable business and which involved an amount of such magnitude

that a decision to allocate the costs to renegotiable business would have entirely eliminated the determination of the several million dollars of excessive profits subsequently determined by the Board. In summary, the criticism here is that a procedure for joinder and resolution of issues on questions of law and fact should not be left to the discretion of the Board, as is now the case, but should be available as a matter of right.

A second type of grievance in this category concerns the lack of customary safeguards governing the collection of evidence and the type of information which may be used as "evidence" by the Board in making its determination. In a proceeding before a court, the tribunal may consider only that information which is admissible as evidence under the rules of evidence applicable to its proceeding, and then only such evidence as is presented at a hearing to which both parties are entitled to be present and to inspect and rebut evidence offered, to confront and examine witnesses, etc. The proceeding before the Board, however, is one in which the Board may consider any information it chooses—regardless of its source, and regardless of whether it would be admissible as evidence under any rules of evidence—and may consider such matter even though the contractor is not entitled as a matter of right to inspect and rebut it (if it is written) or to hear, confront, and cross-examine a witness (if it is testimonial). It has been found in the course of this study that the Board frequently does in fact consider information which would not be admissible even under the most informal rules of evidence. Aside from questions of admissibility, the Board considers evidence gathered by telephone or otherwise in the absence of the contractor, and often does not disclose evidence it considers, even though requested to do so by contractors. Thus, it has been found that, although the Board gives consideration to magazine articles, opinions of a contractor's performance gathered from his competitors, his customers, and higher tier subcontractors, and opinions and other information gathered orally or in writing from procurement officials, the General Accounting Office, the Federal Bureau of Investigation, etc., it is not required to and does not in fact disclose such information it considers, even when requested to do so by the contractor. The Board has also advised that it will continue its practice of denying disclosure of performance reports and certain other information considered by it even though a recent court decision has held that such information must be produced in proceedings before the Tax Court if requested.

A related type of grievance in this category concerns the lack of any of the safeguards customarily employed for the purpose of insuring that the matters treated by the Board as fact are truly fact. In a proceeding before a court, the tribunal commonly permits the parties to submit requested findings of fact, so that any issues there are as to questions of fact may be joined and resolved, and makes findings of fact a matter of record so that the parties are able to determine whether it has committed error in any of its findings of fact. In the proceedings before the Board, however, the Board is not only not *required* by the statute to disclose to the contractor what it treated as being the facts of the case but also, according to contractors' representatives, sometimes does not in fact do so even when requested. Thus, the Board is not required at any stage in its proceedings to disclose to the contractor what it considers his profits to be for the year

under review and is not required to make any of its findings in this regard a matter of record. As has been indicated above, some contractors' representatives have stated that the Board has sometimes refused to furnish the contractor with part IA of the "Report of Renegotiation," containing the basic accounting data necessary for computing the profits with respect to which a determination will be made as to what part of such profits are excessive.

A further type of grievance included in this category concerns the decision-making process of the Board. In a proceeding before a court, the persons constituting the tribunal who will decide the case may not confer ex parte with either one of the parties' representatives and, of course, may not, in any circumstances be the representative of one of the parties. In the case of the proceeding before the Renegotiation Board, however, the renegotiator is himself frequently a member of the regional board in larger cases, and there is no proscription against members of the board conferring with Board employees who handle preparation of the Government's case or any other persons with whom they choose to discuss the case. It has been found in the course of this study that members of both the statutory Board and regional boards commonly do discuss the case, both before and after the hearing afforded the contractor, with staff personnel who handled preparation of the Government's case. It has also been found that both the statutory and regional boards commonly announce their decision in a case to the contractor within a few hours after the conference afforded him, thus indicating that the Board has reached a decision on the case before the appearance of the contractor. It should be noted in this regard that, at the regional board level, the board arrives at a "tentative determination," before the contractor is ever afforded an opportunity for a hearing, and that at the statutory Board level, a conference between Board members and staff personnel, called a "dry run," is held to discuss recommendations of the staff and other matters regarding disposition of the case, before the contractor appears for his conference.

Another type of grievance included in this category relates to the fact that there is no established procedure for hearing arguments on questions of law raised by the facts of the case. In proceedings before a court, after all the evidence is in and the tribunal has made its findings of fact, the parties are commonly afforded a hearing for purposes of arguing questions of law. There is no such requirement in the case of proceedings before the Board.

A further grievance included in this category concerns the fact that there is no record of Board proceedings required to be or in fact kept. It is pointed out that since there is no record kept of the proceeding, the contractor has no basis for citing errors of fact or law committed by the Board in its proceedings in the event of any subsequent proceeding in the Tax Court.

Another grievance in the category relates to the fact that the Board is not required to, and in fact does not, render and publish written opinions in cases decided by it.

(b) *Tax Court procedure.*—Widespread dissatisfaction has been voiced with regard to the procedure followed by the Tax Court for the handling of renegotiation cases. The principal point made in this regard is that the procedure followed by the Tax Court does not constitute the proceeding de novo contemplated by the statute.

The further point made is that since the proceeding before the Tax Court fails to supply the elements of due process admittedly lacking in the procedure before the Board, the contractor is left without the procedural protections which Congress intended to provide, which may even be required by the U.S. Constitution, and which in any event are required by considerations of public policy relating to minimum standards of fairness.

(2) PROPOSALS RECEIVED CONCERNING RENEGOTIATION BOARD AND TAX COURT PROCEDURE

Many proposals have been made for changes in procedures for the handling of renegotiation cases. These proposals have been directed not only to proceedings before the Renegotiation Board, but also to those before the Tax Court and the appellate courts. The particular changes and the combinations of such changes which have been recommended are too numerous to permit them all to be described here, but some of these changes and the combinations thereof recommended are described below.

(*a*) *Application of Administrative Procedure Act to Board and appeals to courts of appeals.*—It has been proposed that the proceeding before the Renegotiation Board be made a proceeding on the record subject to the Administrative Procedure Act and that the administrative decision of the Board be made reviewable by the Federal courts of appeal, as in the case of administrative decisions of certain agencies such as the Federal Power Commission, etc. Under this proposal there would be no de novo proceeding in the Tax Court or any other court subsequent to the administrative proceeding before the Board.

One important variation of this proposal would permit the Board and the contractor first to attempt to negotiate an agreement as to the amount of excessive profits in an informal proceeding, not subject to the Administrative Procedure Act. If, after a certain period of time, the Board and the contractor were unable to reach an agreement in this informal proceeding, there would then be a formal proceeding before the Board which would be on the record, accord opportunity for a hearing, and be subject to the Administrative Procedure Act. Even in this formal proceeding, however, the contractor would be permitted to waive any of the requirements of the Administrative Procedure Act. The general objective of this proposal is to make it possible for contractors who so desire to dispense with the formalities of an Administrative Procedure Act-type proceeding, but yet to insure that the minimum procedural protections accorded by that act would be available, as a matter of right, to contractors who desire them.

(*b*) *Changes in certain aspects of Board procedures.*—Various proposals have been received which would change certain aspects of Board procedures but which would not make the Board's proceedings subject to all the requirements of the Administrative Procedure Act. For example, several proposals would require the Board to establish some sort of procedure for joinder of issue and resolution of disputes as to questions of fact and of law, before commencement of proceedings to determine whether or not profits are excessive.

Several proposals would require that, at both the regional and statutory Board levels, the contractor be notified in writing—within

a certain period of time prior to any hearing or conference and prior to the time of any determination of excessive profits (tentative or otherwise)—of the possibility of a determination of excessive profits and of the specific facts and reasons the Board considers as providing the basis for the possibility of such a determination.

It has also been recommended that the Board be required to disclose to the contractor, prior to the time of any hearing or determination of excessive profits, all information and evidence which it has in its possession with respect to the case. The information thus required to be disclosed would include all parts of the report of renegotiation; performance reports and other information obtained from procurement officials (whether in writing, by telephone, or otherwise); all reports and information obtained from other Government agencies, such as the General Accounting Office and the Federal Bureau of Investigation; all information received from the contractors' customers, higher tier subcontractors, and competitors; and all other information which the Board has in its possession with respect to the case. It has also been proposed that a contractor be given the right, at his option, to confront and examine any persons who supply information to the Board with respect to the case.

It has also been recommended that the proceeding before the Board, at the option of the contractor, be made a proceeding on the record and in the nature of an adversary proceeding such as that followed by the Armed Services Board of Contract Appeals.

(*c*) *Publication by Board of standards for determining whether profits are excessive.*—It has been proposed that the Board be required to publish information regarding the standards relied upon by it in determining whether profits are excessive, so that the contractor would have some guidelines for the preparation and presentation of his case. It has been suggested, for example, that the Board be required to publish from time to time information regarding the profit level, or range of profit level, which it considers permissible for companies within a given industry.

(*d*) *Transfer of jurisdiction from Tax Court.*—It has been proposed that the jurisdiction for de novo proceedings before a court, to redetermine the amount of excessive profits determined by the Board, be transferred from the Tax Court to some other tribunal, such as the Court of Claims or the Armed Services Board of Contract Appeals.

(*e*) *Burden of proof in court proceedings.*—It has been proposed that, in the de novo court proceeding for redetermination of excessive profits (the jurisdiction for which is now vested in the Tax Court), the Government be required to bear the burden of alleging and proving the particulars in which a contractor's profits are excessive—regardless of whether jurisdiction for such proceeding is left with the Tax Court or is vested in some other tribunal. Since the Tax Court now holds that the contractor bears the burden of proving the Board's determination of excessive profits to be erroneous, this proposal is sometimes referred to as one for shifting the burden of proof from the contractor to the Government.

(*f*) *Sections 4 and 5 of H.R. 7086 as passed by House.*—One group of proposals for changes in procedures before the Renegotiation Board and the Tax Court are contained in sections 4 and 5 of the House-passed version of H.R. 7086 (86th Cong., 1st sess.), the bill which became the 1959 law providing for the most recent extension of

renegotiation and for this study.* These provisions were stricken in the Senate and not restored in conference, but the report of the conference committee indicated that no inference was to be drawn from the fact that they were stricken by the Senate and that these provisions were to be included as subjects of this study. These provisions read as follows:

Sec. 4. Statements furnished by Renegotiation Board, etc.

(a) STATEMENTS.—The next to the last sentence of section 105(a) of the Renegotiation Act of 1951, as amended (50 U.S.C., App., sec. 1215(a)), is amended to read as follows: "Whenever the Board makes a determination of excessive profits to be eliminated, it shall, at the request of the contractor or subcontractor, as the case may be, and prior to the making of an agreement or the issuance of an order, prepare and furnish such contractor or subcontractor with a statement of such determination, of the facts used as a basis therefor, and of its reasons for such determination."

(b) DOCUMENTS AVAILABLE FOR INSPECTION.—Section 105(a) of such Act is amended by adding at the end thereof the following new sentences: "At or before the time such statement is furnished, the Board shall make available for inspection by the contractor or subcontractor, as the case may be, all reports and other written matter furnished to the Board by a Department relating to the renegotiation proceedings in which such determination was made, the disclosure of which is not forbidden by law. Nothing in the preceding sentence shall be construed as authorizing the disclosure of any information, referred to in section 1905 of title 18 of the United States Code, in respect of any person other than the contractor or subcontractor (as the case may be) unless such information properly and directly concerns such contractor or subcontractor."

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply only in the case of determinations made by the Renegotiation Board after the date of the enactment of this Act.

Sec. 5. Proceedings before the Tax Court in renegotiation cases.

(a) TAX COURT PROCEEDINGS DE NOVO.—Section 108 of the Renegotiation Act of 1951, as amended (50 U.S.C., App., sec. 1218), is amended by striking out the fourth sentence and inserting in lieu thereof the following new sentences: "A proceeding before the Tax Court to determine the amount, if any, of excessive profits shall not be treated as a proceeding to review the determination of the Board, but shall be treated as a proceeding de novo. The petitioner in such proceeding shall have the burden of going forward with the case; only evidence presented to the Tax Court shall be considered; and no presumption of correctness shall attach to the determination of the Board."

"(b) REVIEW BY SPECIAL DIVISION OF COURT.—Section 108 of the Renegotiation Act of 1951, as amended (50 U.S.C., App., sec. 1218), is amended by striking out the fifth sentence and inserting in lieu thereof the following new sentences: "The determinations by any division of the Tax Court under this section shall be reviewed by a special division of the Tax Court which shall be constituted by the chief judge and shall consist of not less than 3 judges. The decisions of such special division shall not be reviewable by the Tax Court, and shall be deemed decisions of the Tax Court. For the purposes of this section, the court shall have the same powers and duties, insofar as applicable in respect of the contractor, the subcontractor, the Board, and the Secretary, and in respect of the attendance of witnesses and the production of papers, notice of hearings, hearings before divisions, stenographic reporting, and reports of proceedings, as such court has under sections 7451, 7453, 7455, 7456(a), 7456(c), 7457(a), 7458, 7459(a), 7460(a), 7461, and 7462 of the Internal Revenue Code of 1954 in the case of a proceeding to redetermine a deficiency."

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply whether the petition for a redetermination was filed before, on, or after the date of the enactment of this Act, if the decision by the Tax Court has not been rendered on or before such date.

*Sec. 6 of H.R. 7086 as passed by the House would also have made changes in the procedure for appellate review of Tax Court decisions in renegotiation cases. The provisions of sec. 6 are set forth below.

(2) APPELLATE REVIEW

Considerable criticism has been directed to the limitations imposed by present law on appellate review of Tax Court decisions in renegotiation cases and to the litigation necessitated by the uncertainties under present law regarding the scope of review. A number of different proposals for legislative action to meet these problems have been made, but many of them would amend the act so as to permit Tax Court decisions in renegotiation cases to be reviewable in the same manner and to the same extent as are its decisions in tax cases.

Proposals have also been made which would remove the limitations now imposed by section 106(a)(6) on review of Board decisions with respect to the exemption of contracts from renegotiation under that section.

In connection with its action in 1959 on the act which extended the Renegotiation Act of 1951 to June 30, 1962,* the House adopted a provision relating to the scope of appellate review permissible in the case of Tax Court decisions in renegotiation cases. This provision was contained in section 6 of H.R. 7086, as passed by the House, and reads as follows:

> Sec. 6. Review of Tax Court decisions in renegotiation cases.
>
> (a) AMENDMENT OF SECTION 108A.—Section 108A of the Renegotiation Act of 1951, as amended (50 U.S.C., App., sec. 1218a), is amended to read as follows:
>
> "Sec. 108A. Review of Tax Court decisions in renegotiation cases.
>
> "(a) JURISDICTION.—Except as provided in section 1254 of title 28 of the United States Code, the United States Court of Appeals for the District of Columbia shall have exclusive jurisdiction to review decisions of the Tax Court under section 108 of this Act, in the same manner and to the same extent as decisions of the district courts in civil actions tried without a jury. The judgment of such court shall be final, except that it shall be subject to review by the Supreme Court of the United States upon certiorari, in the manner provided in section 1254 of title 28 of the United States Code.
>
> "(b) POWERS.—
>
> "(1) TO AFFIRM, OR REVERSE AND REMAND.—Upon such review the United States Court of Appeals for the District of Columbia shall have power to affirm or, if the decision of the Tax Court is not in accordance with law, to reverse the decision of the Tax Court and remand the case for such further action (including a rehearing) as justice may require.
>
> "(2) CERTAIN PROVISIONS OF INTERNAL REVENUE CODE MADE APPLICABLE.—The provisions of subchapter D of chapter 76 of the Internal Revenue Code of 1954 (relating to court review of Tax Court decisions), to the extent not inconsistent with the provisions of this section, are hereby made applicable in respect of the review provided by this section."
>
> (b) AMENDMENT OF SECOND SENTENCE OF SECTION 108.—The second sentence of section 108 of the Renegotiation Act of 1951, as amended (50 U.S.C., App., sec. 1218), is amended to read as follows: "Upon such filing such court shall have exclusive jurisdiction, by order, to determine the amount, if any, of such excessive profits received or accrued by the contractor or subcontractor, and such determination (1) shall not be reviewed by any court or agency except as provided by section 108A, and (2) shall not be redetermined by any court or agency, except that it may be redetermined by a decision of the special division of the Tax Court if the case is remanded under section 108A(b)(1)."

* 73 Stat. 210 (1959).

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to decisions rendered by the Tax Court of the United States after June 30, 1958. For purposes of the preceding sentence, in applying section 7483 of the Internal Revenue Code of 1954 (relating to time for filing petition for review) in the case of a decision rendered after June 30, 1958, and before the date of the enactment of this Act, such decision shall be treated as having been rendered on the date of the enactment of this Act.

This provision, however, was stricken by the Senate in its action on the House bill* and was not restored in conference. The conference report indicated, however, that it was the intent of all the conferees that no inference should be drawn with respect to the rights of contractors or subcontractors (whether in pending cases or otherwise), from the fact that provisions included in the bill were not included in the conference agreement, and that it was the understanding of all the conferees that such provisions would be included in the subject matter of this study.†

G. ADMINISTRATIVE ORGANIZATION

One proposal, which would effect a major change in the status of the Renegotiation Board, would require that the Board be placed within the jurisdiction of the Secretary of Defense and that it be made a part of the Office of the Secretary of Defense, independent of the Departments of the Army, Navy, and Air Force. It is stated by the sponsors of this proposal that, since the Secretary of Defense is ultimately responsible for the procurement of defense material, he should also be ultimately responsible for renegotiation in order that each aspect of the overall procurement activities may be conducted in such manner as to avoid inconsistencies and to promote the interests and objectives of the national defense program.

H. RELATED PROFIT LIMITATIONS

(1) VINSON-TRAMMELL AND MERCHANT MARINE ACT PROFIT LIMITATIONS

It has been proposed by a number of groups that the profit limitation provisions of the Vinson-Trammell and Merchant Marine Acts be repealed. The reasons advanced in support of this proposal are stated above in section 7.

(2) NONSTATUTORY PROFIT LIMITATIONS

In order to eliminate the use by Government contracting agencies of certain nonstatutory profit limitations, such as those employed by the Navy Department and the Federal Maritime Administration and Board with respect to ship construction and repair contracts, it has been proposed that the Act be amended in the manner provided under section 2 of H.R. 7086 (86th Cong., 1st sess.) as passed by the Senate, which section reads as follows:

Sec. 2. Non-statutory profit limitation provisions

Section 104 of the Renegotiation Act of 1951 (50 U.S.C., app. sec. 1214) is amended by adding at the end thereof the following new sentences: "No provision limiting the amount of profits shall be inserted by the Secretary of any Department in any contract or subcontract the receipts or accruals

* S. Rept. No. 407, 86th Cong., 1st sess. accompanying H.R. 7086 (1959).
† H. Rept. No. 619, 86th Cong., 1st sess. accompanying H.R. 7086 (1959).

from which are subject to this title, or would be subject to this title except for the provisions of section 106, other than the provision required by the first sentence of this section; and any such other provision in any such contract or subcontract, whether entered into before, on, or after the date of the enactment of this sentence, shall have no force or effect. The preceding sentence shall not apply to any incentive provision, to any provision for redetermination or similar revision of the contract price, or to any provision for price escalation which operates without regard to the amount of profits under the contract or subcontract."

The reasons advanced in support of this proposal are stated above in section 7.

APPENDIX B

VIEWS AND RECOMMENDATIONS OF RENEGOTIATION BOARD, AS STATED IN LETTER DATED DECEMBER 21, 1961, TO CHAIRMAN OF JOINT COMMITTEE ON INTERNAL REVENUE TAXATION

THE RENEGOTIATION BOARD,
Washington, D.C., December 21, 1961.

Hon. WILBUR D. MILLS,
Chairman, Joint Committee on Internal Revenue Taxation,
New House Office Building, Washington, D.C.

DEAR MR. MILLS: Some months ago you requested a statement of the views and recommendations of the Renegotiation Board with respect to possible improvements of the Renegotiation Act of 1951, as amended. Your request was made in connection with the "full and conplete study of the Renegotiation Act of 1951, as amended, and of the policies and practices of the Renegotiation Board," directed by Public Law 86–89, approved July 13, 1959. At that time the report of the joint committee was required to be filed not later than June 30, 1961, the time for such filing having theretofore been extended by Public Law 87–4 from the original filing date of March 31, 1951.

By letter dated May 31, 1961, I advised you that, in view of the changes made by the President in the composition of the Board, and until the present Board could complete its reexamination of the policies and procedures employed in renegotiation, the Board would not be in a position to comply adequately with your request. The date for the submission of the report of the joint committee was thereafter extended to January 31, 1962, by Public Law 87–55, approved June 21, 1961.

During the 7 months since I assumed the position of Chairman, the Board and its staff have been engaged in a continuous, and still continuing, reexamination of the renegotiation process. We have endeavored in this effort, as far as possible, to set aside preconceptions and mere tradition. Our aim has been to improve renegotiation procedures, to simplify them, and to make them better known to the public. We believe that we have made substantial improvements which have met and overcome at least some of the criticisms received by your committee from industry sources. We shall continue our studies and efforts in the hope of effecting further improvements.

A. RECENT BOARD ACTIONS

Of interest to your committee, among other things we have done in recent months, are the following:

1. *New procedural regulation.*—We have formulated and published a comprehensive regulation which sets out in detail the successive steps in a renegotiation proceeding. This helps to give renegotiation procedure clarity, certainty and uniformity. The new material was

issued as an amendment to part 1472 of the Board's regulations. The new regulation speaks for itself, and I shall not attempt to repeat it, but only to point our certain special features:

(*a*) Provision is made for oral and written presentation of any issues or disputed matters of fact, law or accounting, and for the resolution thereof.

(*b*) Provision is made for an inspection by regional board personnel of the contractor's plant or site in every case in which there exists a possibility of a determination of excessive profits, and in any other cases deemed appropriate.

(*c*) The regulation provides that a copy of the accounting section of the report of renegotiation will be furnished to the contractor upon request.

(*d*) The regulation distinguishes between tentative and final determinations of the regional boards in class B cases, and between tentative and final recommendations of the regional boards in class A cases. This is designed to give the contractor formal assurance that the initial determination or recommendation in his case is tentative only, and that it will not become final until he has had ample opportunity to be heard, both orally and in writing, on all matters considered pertinent to the case.

(*e*) Provision is made in the regulation for a notice of points for presentation. This is an innovation in renegotiation practice. The regulation requires that the appointed division of the Board, at least 10 days before the date fixed for its meeting with the contractor, will send to the contractor a notice setting forth the points or matters on which presentation is desired at the meeting. The purpose of the notice is to enable the contractor to prepare for the meeting, and, in addition to presenting his entire case as he sees fit, to address himself at such meeting to particular points or matters with respect to which it is believed that presentation will be helpful to the division in its consideration of the case. Our experience to the present time with this new technique indicates that it has been of material benefit to both contractors and the Board.

2. *Renegotiation Rulings.*—The Board has introduced a new series of publications known as Renegotiation Rulings. These are designed to help promote uniform understanding of the renegotiation law. Renegotiation Rulings will be issued from time to time; they will explain or construe specific provisions of the act or regulations. The Board will also continue to issue Renegotiation Bulletins to explain Board policies or procedures or to promulgate other information affecting renegotiation practice.

3. *New standard form of contractor's report.*—The Board has adopted a new single report form to replace the two forms formerly used by contractors and subcontractors in reporting their renegotiable business to the Board. The new form is less than half the length of the previous forms. Approximately 4,000 filings have been made annually in recent years on these forms, and it is obvious that much time, effort and expense will be saved by the new form.

4. *Improved assignment procedure.*—The Board has improved and made more efficient its procedure for the withholding of contractors' filings or the assignment thereof to the regional boards. For reasons formerly considered valid, various types of filings were assigned to

the field for the conduct of renegotiation proceedings even though the possibility of excessive profits was not present. For example, the filings of all contractors related to an assigned contractor were assigned; and filings showing substantial losses were assigned for purposes of the 5-year loss carryforward provisions of the act. Such filings are no longer assigned, but are withheld at the headquarters office. The affected contractors thus are cleared much more quickly, and are saved the time and expense of a proceeding in the field. The Board, too, has gained an efficiency and economy from the new procedure.

5. *Notice of clearance without assignment.*—In conjunction with the increased withholding of filings at the headquarters office, the Board has adopted the practice of issuing a formal notice of clearance in such cases. This notice replaces the "withholding letter" previously used and is substantially similar to the clearance notice issued after assignment and commencement of renegotiation proceedings. Under the present procedure, every contractor whose renegotiable business is in excess of the statutory minimum and whose profits are not excessive receives a notice of clearance, whether his filing has been withheld or assigned. The clearance in each case states that it has been determined by the Board that the contractor did not realize excessive profits in the fiscal year in question. Notice of a formal determination to this effect is patently of greater force and significance than an informal notice of withholding.

B. THE NATURE OF RENEGOTIATION

In our opinion, the Renegotiation Act of 1951 contemplates, as did the predecessor statutes, that renegotiation at the Board level is a purely administrative activity, an adjunct to the procurement process; that the Renegotiation Board is neither a judicial nor a quasi-judicial nor a semijudicial body, but is rather an arm of the Executive, seeking to eliminate excessive profits by agreement with defense contractors; and that such operations of the Board are not adversary in character and should not be burdened with the attributes of formal litigation, but should remain informal.

We offer these observations in order to provide a frame of reference for the comments we shall make below on the various proposals, referred to your committee by the Congress for study or submitted to your committee by industry, to amend the Renegotiation Act of 1951.

C. THE 1959 HOUSE AMENDMENTS NOT ADOPTED

The conference agreement on H.R. 7086, which became Public Law 86–89, approved July 13, 1959, included the following:

It is the understanding of all the conferees both on the part of the House and on the part of the Senate that all matters dealt with in the House bill and in the Senate amendment which are not included under the bill as agreed to in conference are specifically referred to the Joint Committee on Internal Revenue Taxation to be included in the study required under section 4(b) of the bill as agreed to in conference" (H. Rept. No. 619, 86th Cong.).

By letter dated May 19, 1959, addressed to you as chairman of the Committee on Ways and Means, the Renegotiation Board, through its

then Chairman, gave its approval to all the provisions of H.R. 7086. Thereafter, as the result of supervening developments, the Board felt itself obliged in the Senate to modify its position in certain respects. Most of the House amendments proposed in H.R. 7086 were eventually lost in conference. The comments of the present Board on each of the provisions not adopted are as follows:

1. *The efficiency factor.*—Section 2(a) of H.R. 7086 would require the Board, in its consideration of the efficiency of the contractor, to give particular regard to "contractual pricing provisions and the objectives sought to be achieved thereby, and economies achieved by subcontracting with small business concerns."

The substance of this provision was incorporated in the regulations of the Board more than 3 years ago. Therefore, the Board regards the amendment as unnecessary.

2. *The net worth factor.*—Section 2(b) of the bill would require the Board to give consideration to "the net worth, and the amount and source of public and private capital employed," rather than, as now provided in section 103(e) of the act, to "the net worth, with particular regard to the amount and source of public and private capital employed."

This provision was stated by the House to be a clarifying amendment only. The Board has no objection to the amendment if no change in substance is intended thereby. However, the Board does object to the amendment if the elimination of the words "with particular regard to" is to be construed as de-emphasizing the relative significance of the amounts of public and private capital employed in the contractor's operations.

3. *Separate consideration of statutory factors.*—Section 2(c) of the bill would require the Board, in any "statement of facts and reasons" furnished pursuant to section 105(a) of the act, to indicate separately its consideration of, and the recognition given to, each of the statutory factors. A similar provision has been a part of the Board's regulations since 1958. In our view, therefore, the proposed statutory amendment is unnecessary; but the Board has no objection to it.

4. *Statement before agreement or order.*—Section 4(a) of the bill would require the Board to furnish a statment of facts and reasons at the request of the contractor brefore the making of an agreement or the issuance of an order. Under the existing section 105(a) of the act, the Board is required to furnish this statment, at the contractor's request, only after an order has been issued. From the beginning of the Board's operations under the 1951 act, in addition to providing for the statutory statement after issuance of an order, the regulations of the Board have always contained a provision making a summary of facts and reasons available to the contractor, upon his request, before the making of an agreement or the issuance of an order; and the Board's predecessors under the World War II Acts and the 1948 act followed the same practice. We believe it is not necessary to enact this longstanding renegotiation practice into statutory law; but, again, we offer no objection to the provision.

5. *Inspection of performance reports.*—Section 4(b) of the bill would require the Board to permit a contractor to inspect performance reports and other written data furnished to the Board by the procurement departments. This is a matter to which we have given a great deal of thought in recent months.

As a result of our current consideration of this matter, the present Board has concluded that this provision should not be approved.

This provision offers the prime contractor an inspection of a Department's comments on his performance, but does not provide a similar opportunity to the subcontractor to inspect the prime contractor's comments on his performance. Such discrimination is unwise and unfair.

In addition, the Board is of the opinion that there are other important reasons why this inspection provision is undesirable legislation. The claims for the production of documents misconceive the nature of renegotiation proceedings. Whatever reasons may be thought to justify production of Board documents in Tax Court cases, those reasons do not apply to the proceedings conducted by the Board. In the informal nonadversary administrative proceedings at the Board level, there is no more reason to require the Board to open any part of its files for inspection by the contractor than there is to require the Internal Revenue Service to show its files to the taxpayer with whom it is negotiating a deficiency assessment, or to require a contracting officer to show his files to the contractor with whom he is negotiating a contract redetermination or other price adjustment. In each of these instances, when the initial informal, nonadversary administrative effort to reach an agreed settlement fails, machinery is available to the contractor to pursue his rights in another forum where he may have the full protection of formal, adversary, trial-type proceedings. The redetermined contractor may go to the Armed Services Board of Contract Appeals; the aggrieved taxpayer may go to the Tax Court; so, too, the renegotiated contractor.

Other objections to compulsory production of Government performance reports are well known and cogent:

(*a*) If these internal reports were known to be subject to inspection by the contractors to whom they relate, it is not reasonable to expect that the departmental employees who prepare them would be as candid as the occasion requires. A recent survey made by the Board among various procurement installations substantiates this view.

(*b*) Reports from the procurement departments often contain references or intimate information relating to other companies, including competitors of the contractor, to which the contractor is not entitled.

(*c*) It has always been the consistent practice of the Board and its regional boards, when meeting with a contractor with respect to whom an unfavorable performance report has been received, or before such meeting, if practicable, to make the substance of the report known to the contractor and to afford him a reasonable opportunity, then or later, to present his version of the matters reported upon and thus to rebut or counter the statements of the procurement officials. This procedure, we believe, has proved fair and sufficient in practice; actual delivery of the physical documents to the contractor has not been necessary to enable him adequately to defend his interests.

(d) Realistically it must be recognized that, if performance reports were to be shown, their production would often likely be followed by demands from contractors that the authors of the reports be summoned to appear at renegotiation conferences

for confrontation and questioning. This in turn could easily lead to demands for sworn testimony and a written record—and renegotiation would cease to be administratively manageable.

6. *Tax Court proceedings and appellate review.*—Sections 5 and 6 of H.R. 7086 refer to proceedings in the Tax Court and in the court of appeals after the Board has completed its action on the case. As you know, renegotiation litigation in the courts is conducted on behalf of the Government by the Department of Justice. The Board accordingly defers to the Department and to the Tax Court for comment upon these provisions.

D. THE 1959 SENATE AMENDMENT NOT ADOPTED

On June 23, 1959, when H.R. 7086 was debated on the floor of the Senate, an amendment was offered by Senator Butler and adopted. The amendment related to nonstatutory profit limitation provisions in procurement contracts, and read as follows:

"No provision limiting the amount of profits shall be inserted by the Secretary of any Department in any contract or subcontract the receipts or accruals from which are subject to this title or would be subject to this title except for the provisions of section 106, other than the provision required by the first sentence of this section; and any such other provision in any such contract or subcontract, whether entered into before, on, or after the date of the enactment of this sentence, shall have no force or effect. The preceding sentence shall not apply to any incentive provision, to any provision for determination or similar revision of the contract price, or to any provision for price escalation which operates without regard to the amount of profits under the contract or subcontract."

This amendment would affect the authority of the Department of Defense to include profit limitation provisions in its contracts; it does not pertain to the authority or operations of the Board in the conduct of renegotiation. Accordingly, the Board offers no comment on the amendment.

E. INDUSTRY PROPOSALS

The chief of staff of the joint committee has made available to the Board a summary of the various proposals submitted by industry sources for changes in the renegotiation law. Many of the proposals have been considered and rejected by the Congress or its committees in the past. For this reason we shall limit ourselves to certain major areas in which many of the proposals lie.

1. *Exemptions from renegotiation.*—The Board is opposed to any further exemptions.

2. *Administrative Procedure Act.*—From time to time in the past the Congress has been importuned to place the operations of the Board wholly under the provisions of the Administrative Procedure Act. The Supreme Court, in upholding the World War II renegotiation acts, referred to "the primary need for speed and definiteness in these matters" (*Lichter, et al.* v. *United States*, 334 U.S. 742, 791 (1948)). For the same reason, the renegotiation function under the 1951 act was explicitly excluded (see section 111) from the operation of the Administrative Procedure Act, except as to the requirements of section 3 thereof.

The Board is of the opinion that it would be a mistake to subject renegotiation to the formal procedures of the Administrative Procedure Act. A full exposition of its reasons for adhering to this view was submitted to the Ways and Means Committee in the 1958 hearings on renegotiation (hearings, pp. 27–30), and the Board endorses that statement. It is too lengthy to reproduce here, but we commend it to your notice if this procedural proposal is pressed anew.

3. *Fiscal year renegotiation.*—It has been asserted to your committee "that deficiencies in profits or losses on renegotiable business in years other than the year being renegotiated cannot under the law, or are not in fact, taken into account by the Renegotiation Board or by the Tax Court in determining excessive profits. * * * Furthermore, and much more importantly in the view of many, the Board, in determining whether profits for any given year are excessive, is not required to and often does not in fact take into account subnormal profits or deficiencies in profits on renegotiable business for years before or after the year under review" (Draft of Joint Committee Staff Report, Exhibit 4).

Overall renegotiation, as distinct from contract-by-contract renegotiation, requires that a definite period for renegotiation be set. Congress has selected the fiscal year of the contractor as that period and has defined it as the contractor's taxable year. It is with respect to this period that the contractor's books and records are kept, taxes paid, and annual reports filed. Fiscal year renegotiation enables a contractor to ascertain more quickly its true financial position than would be the case if a longer period were selected. The use of any other period for renegotiation purposes would lead to administrative difficulties tending to imperil the Board's ability to administer the act with the desired speed and definiteness. The Board already has at its disposal, and regularly uses, a variety of methods to adjust the effect of fiscal year renegotiation. These include:

(*a*) Under section 103(m) of the act, losses on renegotiable business may be carried forward 5 years.

(*b*) By special accounting agreement with the contractor under RBR 1459.1(b)(2)(ii), the Board may permit preproduction or startup costs incurred prior to the year or years of production to be prorated over the period of production.

(*c*) By special accounting agreement with the contractor under RBR 1459.1(b)(2)(iii), the Board may permit a contractor to adopt for renegotiation purposes the completed contract method of accounting for certain contracts to be performed over a period of more than 1 fiscal year.

(*d*) The periodic estimate method of accounting employed by many large defense contractors, notably airframe and missile manufacturers, for Federal income tax purposes, is permissible under RBR 1459.1(b)(1).

(*e*) Under RBR 1459.8(c)(3), the Board may consider research and development expenses incurred in prior years when such expenses relate to sales in the fiscal year under review.

(*f*) Under RBR 1460.12, the Board gives consideration to "evidence showing risks through actual realization of losses incurred by the contractor in performing contracts in other years similar to the contracts undergoing renegotiation."

(*g*) Under RBR 1460.12, the Board gives consideration under the risk factor, in the fiscal year under review, to the possible saturation of the contractor's market in subsequent years.

The use by the Board of these various devices for alleviating inequities which might otherwise result from fiscal year renegotiation indicates, in the judgment of the Board, that the various proposals designed to achieve this objective are unnecessary.

We shall be pleased, at your convenience, to meet with your or any members of your committee or its staff to discuss the contents of this report. The Bureau of the Budget has advised that there is no objection, from the standpoint of the administration's objectives, to the presentation of this report. The matter of further extending and amending the act is currently under consideration within the administration, and presumably any proposals resulting from such consideration will be made known when the legislative program of the President is announced early in January.

Sincerely yours,

LAWRENCE E. HARTWIG, *Chairman.*

APPENDIX C

Data Relating to Contractors Subject to Renegotiation Board Determinations of Excessive Profits for Government Fiscal Years 1960–1958

The tabulations below, which were furnished by the Renegotiation Board, show statistics for the Board's fiscal years ending 1960, 1959, and 1958. For purposes of these tabulations, each company renegotiated during these 3 years was assigned a number, and if renegotiated in more than 1 Board fiscal year, the same assigned number will appear in the tabulation for such other year. For example, company No. 17 (table 1) is also listed on table 2, indicating that same company was renegotiated in the Board's fiscal years 1960 and 1959.

Column (2) represents the four-digit number from the Standard Industrial Classification series assigned by the Board to that company, based on that company's principal renegotiable product(s). The product(s) represented by that number is described briefly in column (3).

Column (4) represents the contractor's fiscal year involved.

Columns (5) and (6) represent the dollar amounts of sales and profits as reported by the contractor on the standard form of contractor's report (Form RB–1).

Columns (7) and (8) represent the dollar amounts of sales and profits reported by the contractor after adjustment by the Renegotiation Board (prior to any determination of excessive profits).

With respect to the data set forth in columns (14) and (15) showing profits as a percentage of return on net worth before and after renegotiation, the Board has advised that the net worth used in making the computations "is that contained in the contractor's balance sheet, namely: stock issues and earned and capital surplus" and that "Allocation [of net worth] between renegotiable and nonrenegotiable business was generally made on a cost of sales ratio basis."

All information set forth in the tabulations has been supplied by the Renegotiation Board.

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TABLE 1

1960

Company No.	Products: SIC No.	Products: Description	Contractor's fiscal year	Before renegotiation: Per contractor: Sales	Before renegotiation: Per contractor: Profits	Before renegotiation: Per Renegotiation Board: Sales	Before renegotiation: Per Renegotiation Board: Profits	Board's determination of excessive profits	After renegotiation: Sales	After renegotiation: Profits	Profit as a percent of sales: Before renegotiation	Profit as a percent of sales: After renegotiation	Percent return on net worth: Before renegotiation	Percent return on net worth: After renegotiation
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
				Thousands	*Thousands*	*Thousands*	*Thousands*		*Thousands*	*Thousands*				
1	1511	General building contractor	1954	$15,900	$2,589	$15,900	$2,589	$311,512	$15,588	$2,278	16.3	14.6		
2	1611	Highway and street construction	1957	3,157	295	3,427	490	91,824	3,336	398	14.3	11.9	286.1	240.2
3	1711	Plumbing, heating construction	1954	1,114	342	1,096	316	140,514	955	175	28.8	18.3	432.9	239.7
4	1911	Guns, howitzers, etc	1954	49,617	5,196	50,328	5,922	976,399	49,352	4,946	11.8	10.0	11.8	10.0
5	1921	Fuses	1954	4,894	1,497	5,265	1,497	863,965	4,401	633	28.4	14.4	86.9	36.7
6	1922	Boosters, fuses, etc	1954	2,649	427	3,712	548	207,000	3,505	341	14.8	9.7		
7	1922	do	1955	2,000	466	2,553	458	210,853	2,342	247	18.0	10.5		
8	1941 3729	Sight and fire control equipment Aircraft parts and auxiliary equipment.	1954	14,519	1,512	14,519	1,512	287,886	14,231	1,224	10.4	8.6	51.5	45.9
9	1941 3831	Sight and fire control equipment Optical lenses and prisms.	1957	7,514	1,052	7,514	1,052	113,314	7,401	939	14.0	12.7	66.5	57.1
10	2321	Men's shirts	1957	457	104	457	104	33,246	424	70	22.7	16.6	65.7	44.6
11	2322 2327	Men's trousers Men's shorts.	1957	1,503	229	1,503	229	35,402	1,467	194	15.3	13.2	155.5	131.5
12	2422 2432	Plywood Veneer.	1951	1,057	310	1,057	305	42,031	1,015	263	28.9	26.0	27.6	23.8
13	2422 2432	Plywood Veneer.	1951	1,477	411	1,477	353	98,546	1,378	254	23.9	18.5	144.0	103.8
14	2823	Plastics, materials, etc	1957	6,059	794	6,059	794	17,315	6,041	776	13.1	12.8	56.1	54.9
15	2823 3489	Plastic materials Plastic materials.	1957	7,949	1,312	7,949	1,320	250,000	7,699	1,070	16.6	13.9	97.0	79.0
16	2829 4412	Industrial organic chemicals Oversea foreign transportation.	1956	1,273	338	1,273	296	100,000	1,173	196	23.3	16.7	86.9	57.6
17	3011 1922 1929 1951	Tires and tubes Ammunition loading. Munitions manufacturing. Small arms.	1957	105,153	9,914	105,227	10,055	885,174	104,342	9,170	9.6	8.8	22.3	20.3
18	3099	Miscellaneous rubber manufacturing	1954	2,520	361	2,520	361	49,175	2,471	312	14.3	12.6	32.4	28.0
19	3099	do	1956	1,693	386	1,693	315	100,000	1,593	215	18.6	13.5		
20	3312	Steel tubing and solids	1958	4,609	1,002	4,609	986	271,118	4,338	715	21.4	16.5	35.2	25.5
21	3323	Steel foundry manufacturing	1954	1,074	211	1,074	211	42,923	1,032	168	19.6	16.3	68.0	54.3

	3391	Forgings, iron and steel.												
22	3351	Roll, draw copper	1953	58,171	8,994	58,171	8,994	1,782,526	56,388	7,212	15.5	12.8	71.5	57.3
	3352	Roll, draw aluminum.												
23	3391	Forging, iron and steel	1957	3,581	551	3,581	551	21,524	3,560	529	15.4	14.9	79.7	76.6
	3399	Forging, aluminum, brass.												
	3543	Drop-forging dies.												
24	3399	Primary metal industry	1954	778	244	778	249	107,115	671	141	32.0	21.1	355.7	202.9
25	3441	Structural iron and steel	1957	1,617	427	1,938	476	170,045	1,768	306	24.6	17.3	104.7	67.3
26	3511	Steam engines	1956	8,369	1,689	8,369	1,830	300,000	8,069	1,530	21.9	18.9	55.9	46.7
	3561	Pumps, air and gas compressors.												
27	3519	Diesel engines	1956	4,265	1,259	4,265	1,259	578,604	3,686	680	29.5	18.4	42.3	22.9
	3532	Machinery.												
	3542	Do.												
	3561	Pumps and equipment.												
28	3541	Machine tools	1956	1,014	130	1,028	120	21,201	1,007	99	11.7	9.8	----------	----------
29	3541	do	1954	28,499	3,790	28,499	3,790	170,368	28,328	3,619	13.3	12.8	30.4	28.1
	3722	Airplane engines and parts.												
30	3543	Tools and dies	1943	648	168	648	196	125,000	523	71	30.2	13.5	----------	----------
31	3543	do	1944	595	90	595	118	45,000	550	73	19.8	13.3	----------	----------
32	3564	Blowers, vent fans	1957	9,895	1,284	9,895	1,284	135,974	9,759	1,148	13.0	11.8	49.0	43.8
33	3564	do	1958	8,618	1,190	8,618	1,190	137,626	8,480	1,052	13.8	12.4	44.0	38.9
34	3566	Power transmission products	1957	5,056	930	5,053	931	259,185	4,794	672	18.4	14.0	59.8	43.1
35	3566	do	1958	2,141	363	2,134	366	58,102	2,076	307	17.1	14.8	36.1	30.4
36	3566	Power transmission equipment	1958	1,202	295	1,202	295	115,666	1,086	179	24.5	16.5	42.9	26.1
37	3591	AEC valves	1954	3,746	888	8,807	1,263	66,935	8,740	1,196	14.3	13.7	473.1	448.0
38	3591	Valves and controls	1957	7,530	963	7,530	1,014	134,573	7,396	879	13.5	11.9	40.4	35.0
39	3592	Fabricated pipe and fittings	1958	1,351	297	1,351	297	92,872	1,259	204	22.0	16.2	86.8	59.7
	3599	Machine shop (jobbing).												
40	3592	Fabricated pipe and fittings	1959	1,251	259	1,251	261	52,796	1,198	209	20.9	17.4	59.8	47.7
	3599	Machine shop (jobbing).												
41	3593	Bearings	1957	894	261	894	289	60,000	834	229	32.3	27.5	112.7	89.3
42	3593	Ball bearings	1957	2,794	602	2,794	602	124,172	2,669	478	21.5	17.9	103.7	82.4
43	3599	Job machine shop	1957	1,508	270	1,508	270	40,000	1,468	230	17.9	15.7	811.2	691.0
44	3599	Machine shops	1954	218	66	218	78	45,000	173	33	35.9	19.1	233.6	98.9
45	3611	Wiring devices	1954	824	129	1,288	481	225,000	1,063	256	37.4	24.1	250.0	133.3
46	3611	do	1955	560	72	1,051	340	100,000	951	240	32.3	25.2	136.9	96.0
47	3612	Graphite seals, etc	1957	1,834	696	1,834	696	300,000	1,534	396	38.0	25.8	407.2	231.7
48	3614	Generator sets	1955	19,274	2,240	19,274	2,089	234,027	19,040	1,855	10.8	9.7	304.4	270.4
49	3614	Electric motors, generators	1955	1,938	557	1,938	557	286,097	1,652	271	28.8	16.4	322.0	156.6
50	3615	Regohms-volt controls	1957	1,159	255	1,159	255	52,898	1,106	202	22.0	18.2	108.0	98.0
51	3616	Pressure switches	1953	723	241	723	262	165,000	558	97	36.3	17.4	293.0	108.7
	3599	Machinery.												
52	3616	Electric relays	1956	2,024	403	2,024	403	57,246	1,966	346	19.9	17.6	291.0	249.0
53	3631	Insulated wire and cable	1956	2,112	407	2,112	407	116,241	1,996	291	19.3	14.6	68.9	47.1
54	3661	Radio, radar, etc	1953	54,462	8,778	50,002	5,952	750,000	49,252	5,202	11.9	10.6	85.5	74.7
55	3661	do	1954	38,185	6,102	35,499	5,316	1,500,000	33,999	3,816	15.0	11.2	102.8	73.8
56	3661	Radio parts	1959	1,464	281	1,464	281	99,200	1,365	181	19.2	13.3	59.2	38.3
57	3661	Communication products, etc	1957	2,707	452	2,707	490	50,000	2,657	440	18.1	16.5	74.6	67.0
58	3661	Radio, TV, radar	1953	4,174	1,338	4,174	1,338	550,000	3,624	788	32.1	21.8	124.4	65.5
59	3661	do	1954	6,501	2,439	6,501	2,139	1,100,000	5,401	1,039	32.9	19.2	109.6	69.7
60	3661	Equipment rentals, number of related assignments	1953	271	261	271	261	240,000	31	21	96.5	69.2	----------	----------
61	3661	do	1954	136	127	136	127	110,000	26	17	93.0	63.5	----------	----------

TABLE 1—Continued

1960

Company No.	Products		Contractor's fiscal year	Before renegotiation				Board's determination of excessive profits	After renegotiation		Profit as a percent of sales		Percent return on net worth	
				Per contractor		Per Renegotiation Board								
	SIC No.	Description		Sales	Profits	Sales	Profits		Sales	Profits	Before renegotiation	After renegotiation	Before renegotiation	After renegotiation
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
				Thousands	*Thousands*	*Thousands*	*Thousands*		*Thousands*	*Thousands*				
62	3661	Radio, TV, radar	1954	$4,613	$1,116	$4,179	$1,287	$735,754	$3,444	$552	30.8	16.0	332.6	142.4
63	3661	do	1954	126,041	16,237	126,041	16,237	778,474	125,262	15,459	12.9	12.3	73.8	70.3
64	3669	Communication equipment	1956	2,974	738	2,894	736	414,927	2,479	321	25.4	12.9	138.9	58.9
65	3692	Primary batteries	1955	4,634	773	4,634	773	74,823	4,559	698	16.7	15.3	40.8	36.8
66	3711	Motor vehicles	1955	5,111	818	5,111	818	192,806	4,918	625	16.0	12.7	159.8	122.1
67	3721	Aircraft	1955	875,171	61,648	876,904	63,707	6,520,612	870,384	57,187	7.3	6.6	57.6	51.7
68	3721	do	1955	770,837	40,191	785,063	51,705	5,973,176	779,090	45,731	6.6	6.0	46.3	40.9
69	3721	do	1955	545,864	36,773	541,794	37,991	2,075,327	539,718	35,916	7.0	6.7	52.7	49.8
70	3721	do	1956	616,304	31,214	616,501	44,586	2,888,328	613,613	41,698	7.2	6.8	53.6	50.1
71	3721	do	1956	187,274	13,678	186,765	13,678	777,456	185,988	12,900	7.3	6.9	62.8	59.3
72	3721	do	1955	273,856	21,116	282,579	22,236	2,979,747	279,599	19,256	7.9	6.9	47.4	41.0
73	3722	Jet aircraft rings	1956	22,793	3,238	22,793	3,235	250,000	22,543	2,985	14.2	13.2	99.3	91.7
74	3722	Airplane engine and parts	1957	1,556	211	1,556	256	80,000	1,476	176	16.5	12.0	62.3	42.8
75	3722	do	1957	2,826	494	2,826	494	40,000	2,786	454	17.5	16.3	56.4	51.8
	3599	Machine shops.												
76	3722	Aircraft engine and parts	1954	3,101	541	3,101	541	175,000	2,926	366	17.4	12.5	143.5	97.1
77	3723	Turbo-jet engines	1955	405,641	39,082	405,641	39,082	4,943,317	400,698	34,139	9.6	8.5	31.7	27.7
78	3729	Aircraft parts, etc	1954	2,002	604	2,002	604	287,851	1,714	316	30.2	18.4	314.4	164.5
	1941	Sighting and fire control equipment.												
	3661	Communication and other electric products.												
79	3729	Aircraft parts	1956	4,587	654	4,587	700	53,470	4,534	647	15.3	14.3	431.5	398.6
80	3729	Aircraft parts manufacturing	1951	451	88	451	94	43,016	408	51	20.8	12.5	513.5	278.0
81	3729	do	1952	748	74	748	140	56,920	691	83	18.7	12.0	282.7	167.7
82	3729	do	1953	978	79	978	146	31,090	947	115	14.9	12.2	144.0	113.4
83	3729	Airframe parts	1953	13,671	2,913	13,671	2,907	1,322,409	12,349	1,585	21.3	12.8	1,068.1	582.2
	3585	Sheet metal cabinets.												
84	3729	Aircraft parts, etc	1955	2,479	491	2,479	491	100,000	2,379	391	19.8	16.4	50.7	40.4
85	3729	Aircraft parts manufacturing	1951	122	40	122	41	29,553	93	11	33.4	12.1	498.6	137.2
86	3729	do	1952	200	68	200	88	69,240	131	19	44.2	14.7	312.6	68.0
87	3729	do	1953	273	90	273	135	114,153	159	21	49.6	13.4	190.1	29.8

88	3729 1921	Aircraft parts Artillery ammunition.	1954	24,274	4,188	22,948	3,529	1,104,811	21,843	2,425	15.4	11.1	35.2	24.2
89	3729	Aircraft parts	1958	3,273	696	3,273	696	275,000	2,998	421	21.3	14.1	86.7	52.5
90	3729	Aircraft parts manufacturing	1958	6,323	1,471	6,382	1,453	409,872	5,972	1,043	22.8	17.5	219.4	157.5
91	3729	Aircraft heaters and parts	1958	3,248	519	3,248	519	46,650	3,201	472	16.0	14.8	95.6	87.0
92	3731	Shipbuilding and repairs	1955	120,920	14,412	121,148	14,075	2,613,367	118,535	11,462	11.6	9.7		
93	3821	Measurement and control instruments	1956	1,141	323	1,135	324	91,037	1,044	233	28.6	22.3	431.9	310.6
94	3821	do	1958	1,819	361	1,819	361	39,648	1,780	321	19.8	18.0	30.7	27.4
95	4412	Oversea water transportation	1956	1,145	272	1,145	284	100,000	1,045	184	24.8	17.6	70.6	45.8
96	4412	Tramp ship operator	1952	89	52	89	52	6,808	82	45	58.0	54.5	21.1	15.0
97	4412	do	1953	243	128	243	128	45,000	198	83	52.7	41.9	23.1	15.0
98	4412	do	1954	219	133	219	133	38,094	181	95	60.8	52.5	21.4	15.0
99	4412	do	1952	72	35	72	35	10,000	62	25	49.0	40.7	21.0	15.0
100	4412	do	1953	261	152	261	152	50,000	211	102	58.4	48.6	22.3	15.0
101	4412	do	1954	227	151	227	151	44,338	182	107	66.8	58.7	21.3	15.0
102	4412	Tramp tanker operator	1957	950	265	950	301	150,000	800	151	31.7	18.9	495.4	248.7
103	4412	Charter tanker vessels	1956	2,415	962	2,593	1,064	425,000	2,168	639	41.0	29.5		
104	4412	Oversea water transportation	1957	629	326	629	308	125,000	504	183	49.1	36.4	1,076.1	631.0
105	5136	Agents and brokers	1951	63	55	63	55	10,000	53	45	86.2	83.6		
106	5136	do	1952	117	101	117	101	20,000	97	81	86.4	83.6		
107	5139	do	1957	56	19	56	34	20,000	36	14	61.1	39.7		
108	5139	do	1958	59	19	59	34	15,000	44	19	57.4	42.7		

TABLE 2

1959

Company No.	Products: SIC No.	Products: Description	Contractor's fiscal year	Before renegotiation: Per contractor: Sales	Before renegotiation: Per contractor: Profits	Before renegotiation: Per Renegotiation Board: Sales	Before renegotiation: Per Renegotiation Board: Profits	Board's determination of excessive profits	After renegotiation: Sales	After renegotiation: Profits	Profit as a percent of sales: Before renegotiation	Profit as a percent of sales: After renegotiation	Percent return on net worth: Before renegotiation	Percent return on net worth: After renegotiation
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
				Thousands	*Thousands*	*Thousands*	*Thousands*		*Thousands*	*Thousands*				
109	1621	Railroad construction	1952	$212	$52	$212	$42	$9,687	$202	$33	19.9	16.1		
110	1731	Electrical work	1955	791	167	791	170	65,000	726	105	21.2	14.4	323.2	199.5
111	1731	Electrical construction	1955	1,172	289	1,172	282	115,000	1,057	167	24.1	15.8		
112	1799	Special trade contractor	1955	1,299	205	1,299	231	45,965	1,253	185	17.8	14.8	492.9	394.9
113	1911	Guns, howitzers, etc	1954	43,297	4,779	43,297	4,806	664,585	42,632	4,141	11.1	9.7	28.9	24.9
114	1911	Guns and spare parts	1954	5,868	882	5,891	927	127,386	5,764	800	15.7	13.9	40.8	35.2
115	1921	Mortar shell components	1954	810	169	830	189	75,000	755	114	22.8	15.1	124.2	75.0
116	1921	Manufacturing artillery ammunition	1955	3,504	559	3,697	779	176,833	3,520	602	21.1	17.1	140.4	108.6
117	1921	Manufacturing 105-mm. shells	1955	6,697	865	6,697	1,006	300,000	6,397	706	15.0	11.0	76.0	40.0
118	1929	Ammunition, rifle grenades	1955	4,832	874	4,832	874	275,163	4,556	599	18.1	13.1	82.6	56.6
119	1931	Tanks and tank components	1956	24,247	4,014	23,904	4,465	2,490,364	21,413	1,975	18.7	9.2	166.5	73.6
120	1941	Sight and fire control equipment	1953	9,745	1,763	9,761	1,779	172,583	9,588	1,607	18.2	16.8	364.5	329.1
	3661	Communication equipment.												
121	1941	Sight and fire control equipment	1954	1,881	445	1,626	303	117,595	1,509	185	18.6	12.3	120.5	50.2
122	1961	Small arms ammunition	1953	69,632	8,195	69,632	9,224	1,159,411	68,473	8,065	13.2	11.8	36.4	31.9
	3551	Roll, draw of copper	1953											
123	1999	Rocket launchers	1955	1,832	281	1,832	380	65,000	1,767	315	20.8	17.8	77.1	63.9
	1951	Small arms.												
124	2321	Cut, make, trim shirts	1957	1,445	225	1,445	225	45,626	1,399	179	15.6	12.8	287.5	229.3
125	2326	Component parts for uniform caps	1952	673	131	673	367	300,000	373	67	54.4	17.8		
126	2431	Manufacturing sash, doors, etc	1956	6,823	719	6,823	819	100,000	6,723	719	12.0	10.7	25.3	22.2
	2599	Furniture and fixtures.												
127	2515	Manufacturing cotton mattresses	1951	265	44	265	44	14,791	250	30	16.8	11.8	126.7	84.5
128	2532	Professional furniture, cabinets	1957	1,368	433	1,368	433	135,054	1,233	298	31.6	24.2	95.7	65.9
129	2823	Laminated plastic sheets	1957	7,645	1,168	7,645	1,168	103,864	7,542	1,065	15.3	14.1	47.6	43.3
	3313	Pumps and Servo.												
	3561	Hydraulic mechanisms.												
	3569	For heat dissipation, refrigerating, and cooling equipment.												
	3661	Do.												
130	2826	Explosives	1953	699	155	699	158	50,000	649	108	22.5	16.5	22.6	15.4

17	3011	Tires and tubes	1955	133,274	12,981	133,102	12,791	1,649,695	131,452	11,141	9.6	8.5	25.7	22.4
	1922	Ammunition loading.												
	1929	Munitions manufacturing.												
	1951	Small arms.												
131	3011	Tires and tubes	1957	3,915	655	3,915	655	20,368	3,894	634	16.7	16.3	57.3	55.6
132	3099	Manufacturing miscellaneous rubber goods	1951	353	107	329	107	68,517	261	39	32.5	14.8	783.7	282.2
132	3099	do	1952	588	149	608	163	76,677	532	86	26.8	16.3	340.9	180.6
132	3099	do	1953	866	258	839	250	145,988	693	104	29.8	15.1	347.2	144.7
20	3312	Steel, tubing, and solid	1957	7,370	1,986	7,370	1,987	994,964	6,375	992	27.0	15.6	50.7	25.3
133	3351	Roll, draw copper	1954	9,299	1,539	9,299	1,539	344,091	8,955	1,195	16.6	13.3	60.6	47.1
	3631	Insulated wire and cable.												
134	3359	Roll, draw and alloy	1956	1,944	322	1,944	322	117,894	1,826	204	16.5	11.2	119.7	75.8
135	3392	Manufacturing wire and cable	1953	7,782	1,390	7,782	1,390	565,348	7,217	825	17.9	11.4	49.1	29.1
136	3399	Primary metal industry	1955	2,357	567	2,357	595	51,718	2,306	543	25.2	23.5	58.8	53.7
137	3494	Manufacturing bolts, nuts, etc	1955	2,104	330	2,705	617	250,000	2,455	367	22.8	14.9	220.4	131.0
138	3494	do	1956	2,150	213	2,150	402	63,153	2,087	339	18.7	16.2	38.3	32.3
139	3494	do	1956	2,059	250	2,059	250	24,019	2,017	208	12.1	10.3	40.8	33.8
140	3497	Gold, silver, tin, foil	1955	7,031	1,158	7,031	1,162	193,652	6,837	968	16.5	14.2	64.4	53.7
141	3499	Manufacturing metal products	1954	2,270	423	2,270	423	59,167	2,211	364	18.6	16.5	62.3	53.6
142	3499	do	1957	1,678	285	1,678	285	25,015	1,653	260	17.0	15.7	138.6	126.5
142	3499	do	1957	1,682	318	1,682	320	54,819	1,627	265	19.0	16.3	135.1	111.9
26	3511	Steam engines	1955	11,249	1,982	11,249	2,070	300,000	10,949	1,770	18.4	16.2	36.6	31.3
	3561	Pumps, air and gas compressors.												
27	3519	Diesel engines	1955	4,099	931	4,099	1,082	431,767	3,667	650	26.4	17.7	33.2	20.0
	3532	Machinery.												
	3542	Do.												
	3561	Pumps and equipment.												
27	3519	Diesel engines	1954	4,162	971	4,162	971	331,200	3,831	640	23.3	16.7	26.8	17.1
	3532	Machinery.												
	3542	Do.												
	3561	Pumps and equipment.												
143	3531	Construction, mining machines, etc	1952	439	91	382	59	9,532	372	50	15.5	13.4	-------	-------
144	3531	do	1955	878	246	878	240	70,000	808	170	27.3	21.0	92.7	65.6
144	3531	do	1956	1,687	393	1,687	393	125,000	1,562	268	23.3	17.1	88.3	60.2
145	3531	do	1955	1,494	281	1,494	323	116,086	1,378	207	21.6	15.0	195.8	125.4
146	3541	Machine tools	1954	7,745	1,362	7,745	1,362	151,451	7,594	1,211	17.6	15.9	45.1	40.0
30	3543	Tools and dies	1952	689	123	895	223	125,000	770	98	24.9	12.8	126.4	55.5
147	3543	Machine tool accessories	1957	208	79	208	79	50,000	158	29	37.7	18.0	952.3	346.2
148	3543	do	1957	1,965	526	1,965	526	250,000	1,715	276	26.8	16.1	173.3	90.9
149	3561	Pumps and equipment	1957	5,984	1,293	5,984	1,293	523,974	5,460	770	21.6	14.1	66.3	39.5
149	3561	do	1956	5,416	1,099	5,416	1,099	349,397	5,066	749	20.3	14.8	59.8	40.8
150	3565	Industrial trucks, tractors, trailers	1953	574	177	574	177	96,340	477	81	30.8	16.9	135.5	61.7
151	3565	Industrial trucks, tractors, etc	1955	3,302	603	3,293	618	107,000	3,186	511	18.8	16.0	55.9	46.2
34	3566	Power transmission products	1956	2,544	490	2,544	463	104,743	2,439	358	18.2	14.7	67.2	52.0
36	3566	Power transmission equipment	1957	1,209	296	1,209	296	110,297	1,099	186	24.5	16.9	42.6	26.7
152	3566	do	1957	9,110	1,477	9,110	1,515	400,000	8,710	1,115	16.6	12.8	36.2	26.7
153	3569	Machinery and equipment for industry	1955	626	146	626	151	35,023	591	116	24.1	19.6	66.1	50.8
154	3585	Manufacturing air conditioners, industrial refrigerators	1955	12,072	1,932	12,072	2,127	767,137	11,305	1,359	17.6	12.0	41.8	28.3
155	3591	Valves and equipment	1956	1,463	346	1,463	346	146,174	1,317	200	23.7	15.2	257.3	148.7

TABLE 2—Continued

1959

Company No.	Products: SIC No.	Products: Description	Contractor's fiscal year	Before renegotiation: Per contractor: Sales	Before renegotiation: Per contractor: Profits	Before renegotiation: Per Renegotiation Board: Sales	Before renegotiation: Per Renegotiation Board: Profits	Board's determination of excessive profits	After renegotiation: Sales	After renegotiation: Profits	Profit as a percent of sales: Before renegotiation	Profit as a percent of sales: After renegotiation	Percent return on net worth: Before renegotiation	Percent return on net worth: After renegotiation
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
				Thousands	*Thousands*	*Thousands*	*Thousands*		*Thousands*	*Thousands*				
156	3591	Manufacturing valves	1957	$1,215	$224	$1,215	$227	$68,912	$1,146	$158	18.7	13.8	87.5	60.9
39	3592	Fabricated pipe and fittings	1955	1,020	230	1,020	230	69,327	950	161	22.6	16.9	183.7	128.4
	3599	Machine shop (jobbing).												
157	3593	Ball and roller bearings	1955	5,348	1,035	5,348	1,035	66,367	5,281	968	19.3	18.3	52.0	48.6
157	3593	do	1956	2,748	606	2,748	606	105,749	2,642	501	22.1	18.9	60.7	50.1
157	3593	do	1957	5,722	1,489	5,722	1,489	516,574	5,206	972	26.0	18.7	77.6	50.7
41	3593	Bearings	1956	828	246	828	253	60,000	768	193	30.6	25.1	325.7	248.5
158	3599	Machine shop	1952	156	28	156	28	10,000	146	18	17.8	12.1	443.6	283.6
44	3599	do	1953	170	44	138	36	15,000	123	21	26.0	17.0	58.3	34.0
159	3599	do	1953	139	83	139	83	25,000	114	58	59.6	50.8	112.2	78.3
160	3599	do	1953	2,760	305	2,760	329	25,000	2,735	304	11.9	11.1	100.0	92.4
161	3599	do	1955	1,538	488	1,538	488	248,282	1,290	240	31.8	18.6	81.9	40.3
162	3599	Machine shop, various	1955	1,331	276	1,331	276	51,888	1,280	224	20.7	17.5	70.5	57.3
	1621	Machinery and parts.												
163	3599	Machine shop	1956	1,982	355	1,982	358	150,000	1,832	208	18.1	11.4	77.3	44.9
164	3599	do	1957	1,260	258	1,260	266	97,788	1,162	168	21.1	14.5	91.8	58.1
165	3611	Wiring devices	1954	1,275	306	1,275	316	88,838	1,187	228	24.8	19.2	109.4	78.7
166	3612	Graphite seals, etc	1956	1,693	246	1,693	246	50,000	1,643	196	14.5	11.9	23.9	18.1
167	3613	Instruments for measurements, electrical.	1954	5,357	764	5,357	725	122,612	5,235	603	13.5	11.5	92.3	76.7
	3971	Fabricating plastic products.												
168	3614	Rocket motors	1954	7,972	1,137	7,972	1,137	100,000	7,872	1,037	14.3	13.2	27.2	24.8
169	3616	Manufacturing relays	1956	9,718	1,651	9,718	1,653	220,680	9,498	1,433	17.0	15.1	96.4	83.6
170	3616	Industrial electrical control	1955	3,606	729	3,606	729	107,951	3,498	621	20.2	17.8	45.6	38.8
171	3616	do	1954	668	237	668	237	100,000	568	137	35.5	24.1	900.2	520.8
171	3616	do	1955	1,052	374	1,052	374	225,000	827	149	35.5	18.0	264.8	105.3
171	3616	do	1956	1,618	517	1,618	515	275,000	1,343	240	31.8	17.9	157.7	73.5
172	3619	Resistors	1957	2,391	606	2,391	606	225,000	2,166	381	25.3	17.6	98.2	61.8
173	3631	Electrical wire and cables	1956	1,311	266	1,311	266	63,179	1,248	202	20.2	16.2	34.9	26.6
53	3631	Wiring devices and supplies	1955	1,872	371	1,872	378	142,042	1,730	236	20.2	13.6	61.1	38.2
174	3661	Radio and communication equipment.	1953	5,178	809	5,178	768	128,066	5,050	640	14.8	12.7	63.5	53.5
174	3661	do	1954	5,422	793	5,422	793	19,664	5,402	773	14.6	14.3	52.6	51.3

175	3661	Receiver detectors	1953	937	221	937	271	143,230	794	127	28.9	16.0	67.8	31.8
176	3661	Radio and radar	1953	1,281	180	1,281	180	75,000	1,206	105	14.0	8.7	78.1	45.5
177	3661	Design, manufacturing electrical equipment	1954	4,995	1,073	5,012	1,083	337,204	4,674	746	21.6	15.9	225.6	155.3
177	3661	do	1955	2,724	522	2,724	508	51,290	2,673	456	18.6	17.1	126.9	114.1
178	3661	R. F. filters and capacitors	1954	3,022	420	3,022	420	82,954	2,939	337	13.9	11.5	412.4	331.0
179	3661	Radio, telegraph radar detectors	1955	4,788	860	4,788	870	197,245	4,591	673	18.2	14.7	30.7	23.8
	3729	Aircraft parts and equipment.												
180	3661	Machineguns and rifles	1955	9,076	1,591	9,076	1,591	283,532	8,792	1,307	17.5	14.9	25.4	20.9
181	3661	Communications equipment	1956	1,118	201	1,118	201	46,281	1,072	155	18.0	14.4	55.9	43.0
182	3664	Manufacturing and installation of telephone system	1955	4,847	781	4,847	781	50,000	4,797	731	16.1	15.2	56.7	53.1
64	3669	Communications equipment	1955	2,859	394	2,859	422	56,702	2,803	366	14.8	13.1	95.1	82.4
183	3669	do	1955	1,143	241	1,143	241	28,353	1,114	212	21.1	19.1	50.5	44.5
184	3691	Storage batteries	1956	2,207	325	2,201	343	47,598	2,153	296	15.6	13.7	55.3	47.6
185	3692	Primary batteries	1954	6,479	1,095	6,479	1,248	295,155	6,184	953	19.3	15.4	58.8	44.9
186	3699	Manufacturing miscellaneous electrical products	1953	210	80	210	81	49,140	160	32	38.9	20.2	163.0	64.8
187	3699	Electrical products manufacturing	1955	1,197	333	1,216	351	98,526	1,117	252	28.9	22.6	99.5	71.6
188	3714	Motors, generators	1953	89,105	13,221	88,271	12,990	973,995	87,297	12,016	14.7	13.8	33.3	30.8
	3729	Aircraft parts.												
	2823	Plastic materials.												
	1911	Guns, howitzers, mortars.												
69	3721	Aircraft	1954	654,934	45,926	654,934	46,139	4,565,399	650,369	41,574	7.0	6.4	70.6	63.6
72	3721	do	1954	275,269	21,680	243,247	21,388	5,868,319	237,379	15,520	8.8	6.5	75.7	54.9
189	3721	do	1955	210,946	22,195	212,509	23,758	2,519,622	209,990	21,239	11.2	10.1	59.0	52.8
190	3721	do	1955	282,239	24,977	282,219	25,133	4,205,290	278,013	20,928	8.9	7.5	158.3	131.8
191	3721	Aircraft, F-84F	1955	903,967	109,855	895,869	96,506	5,781,226	890,088	90,725	10.8	10.2	37.9	32.7
	3722	Aircraft engines.												
	1931	Tank and tank components.												
	1999	Ordnance and acc.												
	3621	Bombing and navigation components.												
192	3721	Aircraft	1955	813,586	68,792	809,438	60,954	7,352,098	802,086	53,602	7.5	6.7	78.6	69.1
193	3721	Manufacturing of aircraft	1957	1,157	247	1,157	247	81,138	1,075	165	21.3	15.4	85.2	56.9
	3429	Research, aircraft.												
194	3722	Aircraft engines	1956	27,277	3,741	27,277	3,741	288,491	26,989	3,452	13.7	12.8	42.0	38.8
195	3722	do	1956	1,973	354	1,973	354	34,163	1,939	320	17.9	16.5	52.4	47.3
196	3722	do	1957	1,256	322	1,256	322	125,000	1,131	197	25.7	17.5	49.7	30.5
197	3722	do	1957	2,953	448	2,953	448	80,867	2,872	367	15.2	12.8	49.5	40.6
	3723	Aircraft propeller parts.												
83	3729	Aircraft parts (airframe)	1952	1,932	401	1,932	464	250,000	1,682	214	24.0	12.7	389.6	179.8
198	3729	Aircraft parts	1954	577	182	577	150	40,000	537	110	26.0	20.4	115.7	88.7
199	3729	do	1954	3,814	430	3,850	539	128,584	3,721	411	14.0	11.0	100.0	76.1
200	3729	do	1954	5,874	888	5,874	1,013	170,923	5,704	842	17.2	14.8	91.4	76.0
201	3729	do	1955	396,153	44,310	405,130	47,875	4,343,537	400,787	43,531	11.8	10.9	46.4	42.2
202	3729	Wing flap assemblies	1955	3,554	798	3,554	845	369,790	3,184	475	23.8	14.9	52.3	29.4
203	3729	Aircraft parts	1955	4,951	1,068	4,958	1,075	200,000	4,758	875	21.7	18.4	59.7	48.6
	1921	75 mm. shells.												
89	3729	Aircraft parts	1957	3,531	610	3,531	614	140,000	3,391	474	17.4	14.0	71.9	55.5
204	3731	Ship repair	1957	1,424	217	1,424	217	47,546	1,377	169	15.2	12.3	59.3	46.3

TABLE 2—Continued

1959

Company No.	Products: SIC No.	Products: Description	Contractor's fiscal year	Before renegotiation: Per contractor: Sales	Before renegotiation: Per contractor: Profits	Before renegotiation: Per Renegotiation Board: Sales	Before renegotiation: Per Renegotiation Board: Profits	Board's determination of excessive profits	After renegotiation: Sales	After renegotiation: Profits	Profit as a percent of sales: Before renegotiation	Profit as a percent of sales: After renegotiation	Percent return on net worth: Before renegotiation	Percent return on net worth: After renegotiation
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
				Thousands	*Thousands*	*Thousands*	*Thousands*		*Thousands*	*Thousands*				
205	3811	Laboratory and scientific instruments	1954	$1,003	$269	$1,003	$269	$90,115	$913	$179	26.9	19.6	161.6	107.5
206	3811	Manufacturing, mechanical and electronics	1954	5,176	1,199	5,176	1,219	141,823	5,034	1,077	23.5	21.4	86.4	73.8
207	3811	Machinery, rings for compressors	1956	985	252	985	252	118,967	866	133	25.6	15.3	124.0	65.4
208	3821	Manufacturing jet engine fuel controls	1954	613	103	613	207	75,000	538	132	33.7	24.5	147.2	93.8
209	3821	Measurement and control instruments	1956	10,218	1,960	10,218	1,960	517,990	9,700	1,442	19.2	14.9	71.2	52.3
	3613	Manufacturing recording and measurement instruments.												
209	3821	Measurement and control instruments	1957	13,865	2,464	13,865	2,464	550,405	13,315	1,914	17.8	14.4	59.5	46.2
	3613	Manufacturing recording and measurement instruments.												
210	3821	Transducers	1956	2,812	497	2,812	497	74,860	2,737	422	17.7	15.4	300.9	255.5
211	3861	Special mapping cameras	1951	343	98	343	126	75,000	268	51	36.7	19.0	154.7	62.5
212	4463	Stevedoring	1953	617	98	623	142	48,217	574	94	22.8	16.3	99.9	66.0
213	5139	Agents and brokers	1954	158	129	158	129	45,021	113	84	81.6	74.3	----------	----------
214	5139	do	1956	861	62	861	62	20,000	841	42	7.2	5.0	----------	----------
215	5139	do	1954	160	28	159	28	9,062	150	19	17.5	12.5	121.0	86.0
216	6794	Patent owner	1957	62	62	62	62	3,170	58	58	100.0	100.0	----------	----------
217	7399	Research	1955	6,284	795	6,284	785	175,000	6,109	610	12.5	10.0	144.7	112.4
	3729	Manufacturing of aircraft parts.												

TABLE 3

1958

218	1511	Modification and rehabilitation	1955	$2,738	$311	$2,738	$320	$46,649	$2,691	$273	11.7	10.2		
219	1611	Highway and street construction	1952	2,307	474	2,307	442	96,826	2,211	345	19.2	15.6	632.0	461.0
220	1621	Heavy construction	1954	1,169	239	1,169	207	50,000	1,119	157	17.7	14.0		
221	1711	Plumbing, heat and air	1951	339	58	339	63	19,361	319	44	18.6	13.7	383.4	265.6
110	1731	Electrical work	1954	6,732	1,010	6,732	1,024	100,000	6,632	924	15.2	13.9	260.9	235.4
222	1799	Special trade contractor	1956	1,924	346	1,924	346	93,339	1,831	253	18.0	13.8	53.7	39.2
222	1799	do	1957	2,451	441	2,451	441	114,348	2,337	327	18.0	14.0	54.6	40.5
223	1911	Manufacturing gun mounts	1954	2,218	670	2,218	670	358,016	1,860	312	30.2	16.8	138.7	64.5
224	1911	Guns, howitzers, mortars	1953	8,504	910	8,504	910	58,771	8,445	852	10.7	10.1		
	3423	Hand tools.												
225	1921	Manufacturing 105 mm. shells	1953	15,846	1,212	15,549	1,822	150,000	15,399	1,672	11.7	10.8	31.3	28.6
	3729	Aircraft parts.												
226	1921	Manufacturing artillery cases	1953	39,276	5,989	39,276	5,989	1,258,022	38,018	4,731	15.2	12.4	57.9	45.8
	3351	Rolling, drawing brass.												
	3392	Drawing wire from steel.												
227	1921	Artillery ammunition	1955	8,391	974	8,391	1,042	98,160	8,293	944	12.4	11.4	23.5	21.3
228	1921	Manufacturing fuse and shells	1954	8,289	1,729	8,289	1,729	600,000	7,689	1,129	20.9	14.7	32.4	21.1
228	1921	do	1955	6,413	1,093	6,413	1,093	125,000	6,288	968	17.0	15.4	41.6	36.9
229	1921	99 mm. shot	1954	5,113	644	5,113	644	74,096	5,039	570	12.6	11.3	29.2	25.8
230	1921	Artillery ammunition	1955	2,311	504	2,311	504	187,606	2,123	316	21.8	14.9	47.2	29.6
230	1921	do	1954	2,780	543	2,780	542	159,052	2,621	383	19.5	14.6	45.7	32.3
5	1921	do	1953	4,690	880	4,690	880	267,562	4,422	613	18.8	13.9	48.2	33.5
231	1921	Manufacturing cartridge cases	1954	7,958	889	10,048	1,122	186,044	9,862	936	11.2	9.5	37.2	28.9
	1999	Manufacturing signal flares.												
232	1921	Artillery ammunition	1955	4,077	496	4,077	504	38,633	4,038	465	12.4	11.5	47.2	43.6
233	1929	Ammunition	1954	1,002	151	1,002	151	44,747	958	106	15.0	11.1	91.0	64.0
234	1929	do	1954	280	44	280	44	18,744	262	25	15.7	9.7	81.5	46.8
235	1929	Manufacturing ordnance fuses	1953	3,372	553	3,372	553	75,000	3,297	478	16.4	14.5	134.8	116.6
236	1931	Tank and tank components	1954	3,418	692	3,418	692	250,000	3,168	442	20.2	13.9	62.6	39.9
236	1931	do	1955	2,250	381	2,250	401	75,000	2,175	326	17.8	15.0	53.6	41.9
237	1999	Manufacturing cartridge storage cases	1953	7,690	972	7,690	951	221,600	7,468	730	12.4	9.8	137.9	105.8
238	2232	Weaving wool and mohair	1951	2,126	284	2,063	284	117,587	1,946	167	13.8	8.6		
239	2273	Manufacturing hair felt	1952	658	53	1,220	245	120,929	1,099	124	20.1	11.3	262.2	132.9
240	2311	Subcontractor work on wool	1951	829	441	829	441	397,762	431	43	53.2	10.0		
241	2311	do	1951	3,353	275	3,353	963	692,676	2,660	270	28.7	10.2	854.2	239.6
242	2421	Logging and milling	1952	4,610	795	3,610	795	117,901	4,492	677	17.2	15.1	37.5	31.9
	2491	Sales of lumber.												
	4412	Steamship operators.												
	4463	Stevedoring operations.												
243	2499	Manufacturing of wood products	1951	569	69	569	69	20,000	549	49	12.2	8.9	144.2	102.4
244	2522	Metal office furniture	1955	2,483	479	2,483	479	85,888	2,397	393	19.3	16.4	28.9	23.7
245	2671	Paperboard boxes	1954	1,871	304	1,871	304	60,000	1,811	244	16.2	13.5	151.5	121.5
246	2823	Plastic materials	1955	11,305	2,194	11,305	2,194	183,893	11,122	2,010	19.4	18.1	45.6	41.8
	2829	Ammunition loading.												
	2833	Chemicals.												
247	2829	Chemicals	1953	92,018	20,101	92,018	20,101	1,297,130	90,721	18,804	21.8	20.7	39.0	36.5
	2833	Allied products.												

TABLE 3—Continued

1958

Company No.	Products: SIC No.	Products: Description	Contractor's fiscal year	Before renegotiation: Per contractor: Sales	Before renegotiation: Per contractor: Profits	Before renegotiation: Per Renegotiation Board: Sales	Before renegotiation: Per Renegotiation Board: Profits	Board's determination of excessive profits	After renegotiation: Sales	After renegotiation: Profits	Profit as a percent of sales: Before renegotiation	Profit as a percent of sales: After renegotiation	Percent return on net worth: Before renegotiation	Percent return on net worth: After renegotiation
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
				Thousands	*Thousands*	*Thousands*	*Thousands*		*Thousands*	*Thousands*				
248	2829	Manufacturing industrial organic chemicals	1954	$11,291	$3,732	$11,291	$3,732	$1,710,938	$9,580	$2,021	33.1	21.1	78.1	42.3
249	2829	do	1955	6,331	1,568	6,331	1,568	207,255	6,124	1,361	24.8	22.2	45.0	39.1
250	3011	Tires and tubes	1951	5,672	1,107	5,672	1,107	406,340	5,265	700	19.5	13.3	93.0	56.6
131	3011	do	1955	3,244	674	3,244	674	180,258	3,064	494	20.8	16.1	98.3	72.0
251	3312 3631 3732	Steel works and rolling mills Insulated wire and cable. Boat building and repair.	1953	14,372	1,944	14,372	1,944	217,370	14,155	1,727	13.5	12.2	18.5	16.4
20	3312	Steel works and rolling mills	1956	12,259	3,067	12,259	3,111	1,391,563	10,867	1,720	25.4	15.8	54.6	30.2
252	3334 3352	Refining of aluminum Roll, draw, and alloy of aluminum.	1953	220,875	43,798	220,832	42,285	13,549,110	207,283	28,736	19.1	13.9	56.1	38.1
252	3334 3352	Refining of aluminum Roll, draw, and alloy of aluminum.	1952	207,036	34,103	207,077	33,031	3,415,787	203,661	29,614	15.9	14.5	37.4	33.5
253	3351	Manufacturing metal tubing	1953	6,967	1,166	7,001	1,179	239,637	6,761	940	16.8	13.9	31.3	24.7
254	3351	Roll, draw, and alloy of metals	1953	43,688	6,089	43,688	6,089	1,400,374	42,287	4,689	13.9	11.1	77.5	59.7
255	3361 3321	Nonferrous foundries Gray-iron foundries.	1956	1,325	239	1,325	262	40,000	1,285	222	19.7	17.2	69.9	59.2
256	3391 3729 3519	Iron and steel forging manufacturing Aircraft parts manufacturing. Manufacturing of diesel engines.	1952	16,492	3,022	16,492	3,038	820,345	15,671	2,218	18.4	14.2	60.9	44.5
257	3391 3519	Iron and steel forgings Diesel engines.	1953	1,766	346	1,766	346	87,707	1,678	258	19.6	15.4	50.5	37.7
257	3391 3519	Iron and steel forgings Diesel engines	1954	1,045	196	1,045	196	37,705	1,007	158	18.8	15.7	35.3	28.5
21	3391	Iron and steel forgings	1953	3,397	887	3,381	877	377,312	3,004	499	25.9	16.6		
258	3391	Forgings	1953	42,762	7,164	42,762	7,164	743,535	42,018	6,421	16.8	15.3	45.6	40.9
23	3391 3399 3543	Forging, iron and steel Forging aluminum, brass. Drop-forging dies.	1954	2,154	417	2,154	417	36,661	2,117	381	19.4	18.0	60.8	55.4
259	3393 3532 1911	Welded and heavy pipe Oilfield machinery. Guns, howitzers, mortars.	1953	15,828	2,237	15,828	2,281	358,860	15,470	1,922	14.4	12.4	45.4	39.1

136	3399	Primary metal industry	1953	3,576	861	3,576	870	65,198	3,511	805	24.3	22.9	56.7	52.4
260	3439	Heating and cooking appliances	1955	2,402	426	2,402	426	90,006	2,312	336	17.7	14.5	45.9	36.2
261	3441	Structural iron and steel	1954	539	258	539	244	38,790	500	205	45.3	41.1	55.1	46.4
	3444	Sheet metal work.												
	1799	Contractors in construction field.												
262	3444	Sheet metal work	1954	2,369	325	2,369	393	57,640	2,311	335	16.6	14.5	210.0	179.2
	3729	Aircraft parts.												
263	3444	Electronic instrument cases	1954	1,780	433	1,780	433	135,875	1,645	297	24.3	18.1	161.0	122.2
264	3463	Stamped and pressed metal	1954	1,508	234	1,508	234	40,000	1,468	194	15.5	13.2	45.6	37.8
264	3463	do	1955	953	194	953	194	60,000	893	134	20.4	15.0	66.6	46.0
265	3471	Lighting fixtures	1953	6,330	915	6,442	831	70.013	6,372	761	12.9	11.9	46.7	40.3
	3821	Mechanical measurement and control instruments.												
265	3471	Lighting fixtures	1954	9,092	1,102	9,092	1,102	64,319	9,028	1,037	12.1	11.5	44.1	41.5
	3821	Mechanical measurement and control instruments.												
266	3494	Bolts, nuts, screws, etc	1953	14,727	2,946	14,727	2,946	899,614	13,828	2,047	20.0	14.8	46.9	32.6
	3669	Electric signaling apparatus.												
	3993	Signs.												
267	3494	Self-locking nuts and bolts	1954	1,576	334	1,576	334	59,455	1,517	274	21.2	18.1	87.9	72.2
268	3494	Bolts, nuts, rivets	1955	1,019	218	1,019	218	50,208	969	168	21.4	17.3	38.4	29.6
141	3499	Manufacturing metal products	1953	2,321	668	2,321	668	349,278	1,972	319	28.8	16.2	147.8	70.5
269	3499	do	1955	732	201	732	201	94,723	637	106	27.5	16.7	13.1	7.0
270	3519	Manufacturing outboard propeller units	1953	2,839	565	2,839	565	203,482	2,636	361	19.9	13.7	119.2	76.3
27	3519	Diesel engines	1953	8,788	2,527	8,788	2,527	1,059,712	7,728	1,467	28.8	19.0	39.0	22.6
	3532	Oilfield machinery.												
	3542	Metalworking machinery.												
	3561	Pumps and equipment.												
271	3519	Diesel and semidiesel engines	1953	1,307	253	1,307	253	37,148	1,270	216	19.3	17.0	157.1	134.1
272	3519	do	1953	6,600	974	6,600	998	68,164	6,532	929	15.1	14.2	38.5	35.8
	3531	Construction, mining machinery.												
	3563	Conveyers and equipment.												
	3617	Electric welding apparatus.												
273	3521	Tractors	1953	21,348	3,991	21,348	3,991	491,858	20,856	3,499	18.7	16.8	57.4	50.4
144	3531	Construction, mining machinery, etc.	1954	1,004	372	1,004	372	200,000	804	172	37.1	21.4	118.2	54.7
274	3532	Manufacturing portable drill rigs	1952	1,108	168	1,108	225	97,635	1,010	127	20.3	12.6	26.3	14.9
29	3541	Machine tools	1952	41,477	7,007	41,477	7,007	815,199	40,662	6,192	16.9	15.2	53.2	48.6
	3722	Aircraft engines and parts.												
275	3541	Machine tools	1952	12,621	2,988	12,621	3,345	942,902	11,678	2,402	26.5	20.6	82.6	59.3
275	3541	do	1953	2,938	700	2,923	696	117,607	2,805	578	23.8	20.6	60.3	50.0
276	3541	do	1953	3,056	739	3,056	739	74,848	2,981	665	24.2	22.3	59.0	53.0
	3323	Iron castings.												
277	3541	Machine tools	1953	9,674	2,487	9,674	2,482	686,983	8,987	1,795	25.7	20.0	154.4	111.7
278	3541	do	1953	2,172	519	2,172	519	100,000	2,072	419	23.9	20.2	98.6	79.6
279	3541	do	1953	943	84	943	84	30,000	913	54	8.9	5.9	233.4	150.2
	3543	Machine tool accessories.												
280	3541	Machine tools	1954	546	146	546	146	46,079	500	100	26.7	20.0	125.7	86.0
	3599	Machine shops.												
281	3541	Grinding machinery and spare parts	1954	587	178	587	185	65,855	521	119	31.6	22.9	63.7	41.0
30	3543	Tools and dies	1951	383	57	468	116	65,000	403	51	24.8	12.6	140.9	61.9

TABLE 3—Continued

1958

Company No.	Products: SIC No.	Products: Description	Contractor's fiscal year	Before renegotiation: Per contractor: Sales	Before renegotiation: Per contractor: Profits	Before renegotiation: Per Renegotiation Board: Sales	Before renegotiation: Per Renegotiation Board: Profits	Board's determination of excessive profits	After renegotiation: Sales	After renegotiation: Profits	Profit as a percent of sales: Before renegotiation	Profit as a percent of sales: After renegotiation	Percent return on net worth: Before renegotiation	Percent return on net worth: After renegotiation
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
				Thousands	*Thousands*	*Thousands*	*Thousands*		*Thousands*	*Thousands*				
282	3543 5084	Machine tool accessories Industrial machinery equipment and supplies.	1952	$408	$55	$408	$55	$39,335	$369	$15	13.3	4.1	240.0	66.7
283	3543 3722	Jet engine parts Jigs and fixtures.	1953	3,337	235	3,209	383	66,628	3,143	316	11.9	10.1	137.4	113.5
284	3543	Machine tool accessories	1953	2,038	229	2,038	229	70,000	1,968	159	11.3	8.1	66.2	46.0
285	3543	do	1954	964	295	964	295	133,400	831	162	30.6	19.5	1,975.9	1,082.7
286	3543	Manufacturing machine tool accessories.	1954	1,952	531	1,952	484	221,521	1,730	262	24.8	15.2	104.1	56.4
149	3561	Pumps and equipment	1955	3,711	702	3,711	702	128,056	3,583	574	18.9	16.0	48.6	39.8
129	3561 3313 3661	Refrigeration equipment Mixing equipment. Electronic pumps.	1954	4,242	635	4,242	635	75,273	4,167	560	15.0	13.4	83.7	73.8
129	3561 3313 3661	Refrigeration equipment Mixing equipment. Electronic pumps.	1955	4,256	684	4,256	684	98,991	4,157	585	16.1	14.1	38.8	33.1
151	3565	Industrial trucks, tractors, etc	1954	2,002	414	2,002	420	117,477	1,885	303	21.0	16.1	61.0	43.9
34	3566	Power transmission products	1955	3,972	652	3,999	685	144,649	3,854	541	17.1	14.0	47.6	37.6
36	3566	do	1955	1,058	247	1,058	247	82,505	976	165	23.4	16.9	29.9	19.9
153	3569	Industrial machinery and equipment	1954	979	211	979	220	43,318	935	176	22.5	18.9	59.3	47.7
287	3569	do	1953	318	108	318	95	37,000	281	58	29.9	20.6	114.3	69.9
154	3585	Manufacturing air-conditioners, industrial refrigerators	1954	10,500	1,581	10,500	2,278	1,257,673	9,243	1,020	21.7	11.0	69.2	31.0
154	3585	do	1953	44,739	5,099	44,739	5,374	1,581,478	43,158	3,793	12.0	8.8	50.5	35.7
156	3591	Manufacturing of valves	1955	1,105	225	1,105	235	78,983	1,026	156	21.3	15.2	86.0	57.1
288	3591	Valves and fittings	1954	1,028	236	1,028	240	99,523	928	140	23.3	15.1	112.3	65.9
288	3591	do	1955	881	177	881	177	49,320	832	127	20.1	15.3	93.0	67.1
289	3591	Manufacturing valves and fittings	1954	18,862	2,557	18,862	2,722	442,405	18,420	2,280	14.4	12.4	149.1	124.9
289	3591	do	1953	20,243	2,800	20,243	3,037	737,211	19,506	2,300	15.0	11.8	224.0	169.6
290	3593	Ball and roller bearings	1953	1,781	351	1,781	351	125,000	1,656	226	19.7	13.7	69.1	44.5
157	3593	do	1954	6,392	1,302	6,392	1,302	185,852	6,206	1,116	20.4	18.0	77.8	66.7
291	3593	do	1953	10,597	2,759	10,597	2,775	419,884	10,177	2,355	26.2	23.1	48.8	41.4

44	3599	Machine shops	1952	125	40	125	40	20,000	105	20	32.1	19.2	113.7	57.2
159	3599	do	1952	154	79	154	69	10,000	144	59	45.0	41.2	339.6	296.8
160	3599	do	1952	2,094	355	2,094	355	145,000	1,949	210	17.0	10.8	155.9	92.3
292	3599	do	1952	80	17	80	17	6,596	74	10	21.3	14.2	442.8	271.8
293	3599	do	1952	420	145	420	145	20,000	400	125	34.4	31.2	1,688.0	1,096.0
294	3599	do	1953	619	139	619	148	69,295	550	78	23.9	14.3	74.2	39.4
295	3599	do	1954	603	107	603	107	20,000	583	87	17.8	15.0	559.0	227.4
296	3599	do	1954	986	146	986	146	34,687	951	112	14.8	11.7	81.2	61.9
297	3599	do	1954	1,000	217	1,000	217	60,000	940	157	21.6	16.6	107.6	72.3
298	3599	do	1954	984	349	984	349	175,000	809	174	35.5	21.6	85.9	43.0
299	3599	do	1954	970	216	970	159	48,789	921	110	16.4	12.0	66.1	45.8
300	3599	do	1955	742	176	742	176	53,201	688	123	23.8	17.9	34.9	24.4
	3541	Machine tools.												
301	3599	Machine shop	1955	133	57	133	57	40.625	93	17	43.0	18.1	1,434.4	418.8
302	3599	do	1956	296	70	296	63	23,588	272	39	21.3	14.4	168.9	105.5
302	3599	do	1957	357	65	357	57	8,135	348	48	15.9	13.9	71.3	61.0
303	3599	Machinery aircraft instruments	1954	439	195	439	170	97,261	342	73	38.8	21.4		
304	3611	Wiring devices	1954	1,615	407	1,615	407	37,099	1,578	370	25.2	23.4	47.9	44.7
305	3611	do	1955	2,096	533	2,096	533	84,335	2,011	449	25.4	22.3	50.0	42.1
306	3611	Electrical machinery equipment	1953	1,143,463	121,669	1,143,463	121,669	2,646,215	1,140,816	119,023	10.6	10.4	22.4	21.9
	3722	Aircraft engine and equipment.												
307	3613	Instruments for measurement, electrical	1955	1,198	144	1,198	144	60,000	1,138	84	12.0	7.3		
308	3614	Engine generator sets and parts	1952	10,146	1,008	10,109	1,312	259,409	9,850	1,053	13.0	10.7		
309	3614	Manufacturing electrical mechanical components	1956	2,182	470	2,182	470	78,841	2,104	391	21.5	18.6	93.6	77.9
310	3616	Industrial electrical control	1955	1,023	358	1,023	358	191,516	831	167	35.0	20.0	205.4	95.6
311	3616	Relay-circuit breakers	1955	1,645	314	1,645	314	75,000	1,570	239	19.1	15.2	89.1	67.8
172	3619	Resistors	1956	2,794	571	2,794	571	75,000	2,719	496	20.4	18.2	122.5	106.4
312	3619	Manufacturing electrical relays	1954	1,025	197	1,025	197	49,381	976	148	19.3	15.2	144.3	108.2
173	3631	Electrical wire and cables	1954	890	182	890	182	41,649	848	140	20.4	16.5	29.6	22.8
173	3631	do	1953	1,164	236	1,164	236	64,809	1,099	171	20.3	15.6	43.6	31.6
313	3641	Motor car, etc. electrical equipment	1954	30,517	3,446	30,517	3,975	446,953	30,070	3,528	13.0	11.7	48.0	42.6
314	3641	do	1954	580	176	564	161	64,475	500	96	28.4	19.2	254.1	152.0
	1621	Construction, excavation, highway; and steel.												
	5062	Electrical merchandise.												
315	3641	Motor car, etc., electrical equipment	1955	3,069	645	3,069	645	75,000	2,994	570	21.0	19.0	92.2	81.5
316	3641	do	1956	994	306	994	306	150,000	844	156	30.8	18.5	545.0	278.0
62	3661	Radio, TV, radar	1953	3,658	847	3,458	936	437,243	3,021	499	27.1	16.5	454.6	242.2
177	3661	Design, manufacturing electrical equipment	1953	5,724	933	5,724	862	52,000	5,672	810	15.1	14.3	182.9	171.8
178	3661	Filters, capacitors	1953	2,445	278	2,445	278	38,568	2,407	239	11.4	9.9	977.0	841.3
317	3661	Radio, TV, radar	1953	679	161	679	161	49,600	629	112	23.7	17.7	203.3	140.7
318	3661	Manufacturing of capacitors	1953	237	47	237	47	18,500	219	28	19.6	12.8	125.1	75.4
179	3661	Radio, telegraph, radar detectors	1954	9,270	1,261	9,237	1,373	143,496	9,094	1,230	14.6	13.5	39.2	35.1
	3729	Aircraft parts and equipment.												
319	3661	Radio, telegraph, radar, etc	1954	8,965	1,316	8,965	1,316	200,000	8,765	1,116	14.7	12.7	64.5	54.7
320	3661	do	1954	6,219	923	6,219	1,023	200,000	6,019	823	16.4	13.7	97.4	78.3
321	3661	do	1954	2,531	478	2,531	478	75,000	2,456	403	18.9	16.4	281.1	236.8
322	3661	Radio, telegraph, radar equipment	1954	642	156	642	161	32,532	609	128	25.0	21.0	112.1	89.4

TABLE 3—Continued

1958

Company No.	Products: SIC No.	Products: Description	Contractor's fiscal year	Before renegotiation: Per contractor: Sales	Before renegotiation: Per contractor: Profits	Before renegotiation: Per Renegotiation Board: Sales	Before renegotiation: Per Renegotiation Board: Profits	Board's determination of excessive profits	After renegotiation: Sales	After renegotiation: Profits	Profit as a percent of sales: Before renegotiation	Profit as a percent of sales: After renegotiation	Percent return on net worth: Before renegotiation	Percent return on net worth: After renegotiation
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
				Thousands	*Thousands*	*Thousands*	*Thousands*		*Thousands*	*Thousands*				
323	3661 3599	Manufacturing radar apparatus Machining aircraft tie rods.	1954	$759	$157	$759	$157	$35,753	$724	$121	20.6	16.7	88.7	68.5
324	3661	Manufacturing communication equipment	1955	1,798	421	1,798	427	76,515	1,721	351	23.8	20.4	128.9	105.8
325	3661	Radio, radar, detector apparatus	1956	6,162	964	6,162	964	125,000	6,037	839	15.6	13.9	91.8	79.9
326	3664	Magnets-telegraph, radio, TV	1955	910	193	970	196	65,000	905	131	20.3	14.5	72.1	48.3
182	3664	Manufacturing and installation telegraph systems	1954	5,889	1,240	5,889	1,240	400,000	5,489	840	21.1	15.3	114.8	77.8
182	3664	do	1953	5,287	881	5,287	881	100,000	5,187	781	16.7	15.1	48.0	42.6
64	3669	Communications equipment	1953	1,947	463	1,947	472	264,564	1,682	207	24.2	12.3	205.4	90.2
64	3669	do	1954	1,907	343	1,907	352	113,434	1,794	239	18.5	13.3	101.1	68.5
183	3669	do	1954	1,881	501	1,881	501	182,878	1,698	318	26.6	18.7	142.2	90.3
327	3693	Manufacturing miscellaneous electrical products	1954	4,200	815	4,200	804	71,949	4,128	732	19.1	17.7	83.3	75.8
328	3693	X-ray, therapeutical apparatus	1953	4,474	1,392	4,425	1,364	121,226	4,304	1,243	30.8	28.9	138.7	126.4
329	3714 1921	Motor vehicle parts Artillery, ammunition, and components.	1955	947	201	947	202	58,491	889	143	21.3	16.1	89.5	63.6
329	3714 1921	Motor vehicle parts Artillery, ammunition, and components.	1954	1,018	205	1,018	205	42,691	975	162	20.1	16.6	84.5	66 9
67	3721	Aircraft	1954	1,062,266	75,410	1,075,161	75,425	9,662,408	1,065,499	65,762	7.0	6.2	90.5	78.9
68	3721	do	1954	756,459	44,092	775,958	48,287	4,358,410	771,599	43,929	6.2	5.7	55.4	50.4
189	3721	do	1954	237,352	23,873	237,352	23,873	2,433,006	234,919	21,440	10.1	9.1	66.5	59.8
192	3721	do	1954	642,951	51,616	658,261	55,316	12,736,038	645,525	42,579	8.4	6.6	85.4	65.7
71	3721	do	1955	164,009	11,405	164,009	11,405	446,000	163,563	10,959	7.0	6.7	61.2	58.8
330	3721	Manufacturing, small aircraft	1956	1,865	311	1,865	311	63,795	1,802	247	16.6	13.7	98.6	78.3
331	3722	Manfacturing aircraft engines, parts	1954	84,327	8,408	84,853	8,326	394,975	84,458	7,931	9.8	9.4	188.6	179.6
332	3722	Manufacturing gears and transmissions	1954	1,584	266	1,595	282	100,000	1,495	182	17.7	12.2		
333	3722	Aircraft engines and parts	1954	646	177	646	249	118,257	528	130	38.5	24.7	135.1	70.9
334	3722	do	1954	295,715	30,759	295,715	30,759	2,915,231	292,799	27,844	10.4	9.5	28.0	25.3

	1931	Tanks and components.											
335	3722	Aircraft engines and parts	1956	4,062	971	4,062	971	375,128	3,687	596	23.9	16.2	50.6	31.0
196	3722	do	1956	1,336	385	1,336	386	200,000	1,136	186	28.9	16.4	81.6	39.3
336	3722	Precision parts, jets and missiles	1951	539	155	539	218	125,000	414	93	40.3	22.4	----------	----------
336	3722	do	1952	672	195	672	253	135,000	537	118	37.7	22.0	----------	----------
336	3722	do	1953	1,103	402	1,103	547	400,000	703	147	49.6	21.0	----------	----------
336	3722	do	1954	1,215	325	1,215	325	85,000	1,130	240	26.7	21.2	----------	----------
78	3729	Aircraft parts	1953	1,784	301	1,847	328	64,862	1,783	264	17.8	14.8	324.3	260.3
	1941	Manufacturing fire control equipment.												
	3661	Manufacturing communications equipment.												
337	3729	Aircraft parts, etc	1953	4,154	758	4,154	758	200,000	3,954	558	18.3	14.1	4,785.6	3,518.9
84	3729	do	1953	10,204	1,469	10,204	1,469	500,000	9,704	969	14.4	10.0	295.3	195.1
338	3729	do	1953	12,054	1,856	11,823	1,667	141,314	11,682	1,526	14.1	13.1	185.7	170.0
338	3729	do	1954	12,280	1,783	12,235	1,776	188,952	12,046	1,587	14.5	13.2	119.2	106.5
88	3729	Aircraft parts	1953	27,658	1,933	27,831	4,893	2,456,752	25,375	2,436	17.6	9.6	47.2	23.5
	1921	Artillery ammunition.												
339	3729	Stabilizers for bombers	1953	1,342	363	1,614	360	150,000	1,464	210	22.3	14.4	87.8	51.3
340	3729	Manufacturing shock mounts	1954	3,586	517	3,586	517	20,404	3,566	497	14.4	13.9	89.1	85.6
201	3729	Aircraft parts	1954	482,007	58,927	482,007	58,927	9,205,940	472,801	49,721	12.2	10.5	58.8	49.6
341	3729	do	1954	439	170	439	170	35,233	404	135	38.8	33.5	388.1	334.8
342	3729	do	1954	673	242	673	242	68,331	605	173	35.9	28.7	43.7	31.4
	3599	Machine shop.												
202	3729	Aircraft parts	1954	6,250	1,688	6,250	1,688	796,108	5,454	892	27.0	16.3	54.6	28.8
343	3729	do	1954	2,938	442	2,938	460	44,569	2,894	415	15.6	14.3	65.9	59.5
	3322	Iron, steel foundries.												
344	3729	Aircraft parts	1954	1,489	340	1,489	358	175,000	1,314	183	24.1	14.0	206.3	105.5
345	3729	do	1954	647	208	647	211	95,558	552	115	32.6	20.9	210.1	115.0
	3441	Manufacturing iron and steel.												
346	3729	Aircraft parts	1954	47,712	5,408	47,597	5,292	750,000	46,847	4,542	11.1	9.7	47.4	40.7
347	3729	do	1954	41,869	4,410	42,892	4,763	368,470	42,523	4,195	10.6	9.9	42.0	38.6
348	3729	do	1954	850	108	850	188	66,064	784	121	22.1	15.5	50.7	32.8
91	3729	do	1955	5,365	1,071	5,365	1,072	346,001	5,019	726	20.0	14.5	74.1	49.9
349	3729	do	1955	45,442	5,790	46,797	5,883	700,000	46,097	5,183	12.6	11.2	56.3	49.6
350	3729	do	1955	561	91	561	93	20,000	541	73	16.6	13.6	184.7	145.1
351	3729	do	1955	2,323	334	2,323	334	45,741	2,277	288	14.4	12.7	70.2	60.5
89	3729	do	1955	2,562	489	2,562	489	150,000	2,412	339	19.1	14.1	57.0	39.5
352	3729	do	1955	2,959	421	2,959	421	62,129	2,897	359	14.2	12.4	211.2	180.0
352	3729	do	1956	5,375	749	5,375	749	179,262	5,195	570	13.9	11.0	192.4	146.3
353	3729	do	1956	1,573	495	1,573	485	321,594	1,251	163	30.8	13.0	43.0	14.5
354	3731	Building motor and pleasure boats	1954	548	158	582	200	82,474	500	117	34.3	23.4	162.8	63.3
355	3731	Ship repair	1955	647	162	647	190	74,304	573	116	29.4	20.2	107.0	57.9
356	3731	Construction, Navy mine sweepers	1952	1,704	315	1,704	315	86,870	1,617	228	18.5	14.1	155.3	112.5
356	3731	do	1954	3,603	895	3,603	895	476,210	3,127	419	24.9	13.4	204.7	95.8
356	3731	do	1955	1,760	506	1,760	506	288,760	1,471	217	28.7	14.7	82.9	35.6
357	3799	Transportation equipment	1953	4,924	823	4,924	823	169,373	4,755	654	16.7	13.7	49.7	39.5
358	3811	Laboratory and scientific instruments	1952	447	61	447	61	23,199	424	38	13.7	8.9	75.9	47.0
358	3811	do	1953	1,068	324	1,068	324	193,800	875	130	30.3	14.9	387.0	161.9
358	3811	do	1954	1,198	256	1,198	256	39,688	1,158	217	21.4	18.7	270.9	239.5
359	3821	Measurement and control instruments	1953	4,677	905	4,677	905	75,472	4,602	829	19.3	18.0	75.2	68.9

TABLE 3—Continued

1958

Company No.	Products		Contractor's fiscal year	Before renegotiation				Board's determination of excessive profits	After renegotiation		Profit as a percent of sales		Percent return on net worth	
				Per contractor		Per Renegotiation Board								
	SIC No.	Description		Sales	Profits	Sales	Profits		Sales	Profits	Before renegotiation	After renegotiation	Before renegotiation	After renegotiation
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
				Thousands	*Thousands*	*Thousands*	*Thousands*		*Thousands*	*Thousands*				
360	3821	Measurement and control instruments	1953	$7,421	$1,146	$7,421	$1,146	$100,000	$7,321	$1,046	15.5	14.3	39.6	36.2
	3723	Aircraft propellers and parts.												
209	3821	Measurement and control instruments	1953	16,001	3,183	16,001	3,183	1,165,240	14,836	2,018	19.9	13.6	83.1	52.7
	3613	Manufacturing recording and measurement instruments.												
209	3821	Measurement and control instruments	1954	9,214	1,804	9,214	1,868	470,085	8,744	1,398	20.3	16.0	61.7	46.2
	3613	Manufacturing recording and measuring instruments.												
	3582	Laundry machines.												
94	3821	Measurement and control instruments	1955	1,020	285	1,012	278	92,886	919	185	27.4	20.1	63.3	42.1
361	3831	Manufacturing fire control instruments	1955	2,493	428	2,493	428	100,000	2,393	328	17.2	13.7	68.6	52.5
362	3831	Optical instruments and lenses	1953	7,877	1,263	8,126	1,338	98,325	8,027	1,240	16.5	15.4	20.3	18.8
363	3861	Photographic equipment and supplies	1953	1,802	314	1,802	314	33,282	1,768	281	17.4	15.9	97.0	86.7
363	3861	do	1954	931	212	931	212	66,246	864	146	22.8	16.9	109.4	75.2
364	3861	Manufacturing aerial survey cameras	1953	6,229	1,033	6,108	913	100,000	6,008	813	14.9	13.5	110.2	98.2
365	3861	Manufacturing photographic equipment and supplies	1952	3,213	368	3,491	811	71,033	3,420	740	23.2	21.7	178.3	162.7
366	4291	Storage of sisal	1953	225	95	225	89	49,348	175	39	39.4	22.4	197.0	87.2
367	4291	Storage of crude rubber	1952	132	78	132	81	38,874	93	42	61.1	45.0	----------	----------
368	4412	Transportation of freight on vessels	1951	27,645	4,086	27,645	3,873	248,630	27,396	3,624	14.0	13.2	35.6	33.3
	3731	Shipbuilding and repair.												
	4462	Operating piers and docks.												
369	4412	Charter revenue from MSTS	1951	2,227	234	2,227	234	50,000	2,177	184	10.5	8.4	----------	----------
370	4412	Chartering out sea vessels	1951	1,179	317	1,179	317	99,989	1,079	217	26.9	20.1	275.4	188.6
371	5073	Wholesale distribution of hardware	1952	1,654	314	1,618	308	125,000	1,493	183	19.0	12.2	748.8	444.4
372	5073	do	1956	1,339	248	1,339	248	94,064	1,245	154	18.5	12.4	202.4	125.7
373	5099	Wholesale distribution of miscellaneous items	1951	1,230	147	1,230	147	50,000	1,180	97	12.0	8.2	391.1	258.2
374	5113	Selling cloths	1951	6,808	1,205	6,245	776	179,493	6,245	597	12.1	9.6	31.2	24.0
375	5117	Metals and minerals	1953	10,484	1,448	10,484	1,448	196,338	10,288	1,252	13.8	12.2	83.7	72.4
376	5136	Agent, granite plates	1952	59	48	55	46	13,000	42	33	84.2	79.3	----------	----------

377	5136	Brokers and disbursers	1952	456	52	467	70	40,000	427	30	15.1	7.1	165.1	71.3
378	5136	Machine equipment and supplies	1953	127	68	127	70	19,460	107	50	54.9	46.7		
379	5137	Agent distributor, steel plates	1951	1,288	238	1,288	243	200,000	1,088	43	18.8	3.9		
213	5139	Agents and brokers	1953	78	60	78	57	15,230	63	42	72.9	66.4		
380	5139	Manufacturing representatives	1954	65	39	65	39	10,000	55	29	58.8	51.4		
381	5139	Sales agents, electrical systems	1954	120	30	122	32	14,862	107	17	26.5	16.3		
382	5139	Agents and brokers	1954	299	113	299	113	40,000	259	73	38.0	28.4		
214	5139	do	1955	78	56	78	56	25,000	53	31	72.5	59.5		
383	5139	do	1956	63	54	63	54	23,973	39	30	85.0	75.9		
216	6794	Patent owner	1955	70	70	63	63	2,140	61	60	99.1	99.1		
384	7399	Business services	1954	44	36	44	36	14,794	30	21	80.2	70.4	447.2	261.6
385	8911	Engineering and archeological services	1953	589	125	589	128	69,091	519	59	21.7	11.3	239.6	110.0
386	8911	do	1954	3,924	1,750	3,924	1,400	743,785	3,180	656	35.7	20.6		

APPENDIX D

INFORMATION RELATING TO FEDERAL MARITIME ADMINISTRATION AND FEDERAL MARITIME BOARD CONTRACTS

MARCH 21, 1961.

Hon. COLIN F. STAM,
Chief of Staff, Joint Committee on Internal Revenue Taxation, Congress of the United States, Washington, D.C.

DEAR MR. STAM: This letter is with reference to your letter of February 10, 1961, in which you requested certain information for use in connection with the study of renegotiation being made by your committee pursuant to section (4)(b) of Public Law 86–89.

Enclosed herein is an analysis of contracts awarded by the Federal Maritime Board/Maritime Administration during each of the Government fiscal years 1956, 1957, 1958, 1959 and 1960. Information for a similar analysis with respect to renegotiable subcontracts related to prime contracts awarded by the Federal Maritime Board/Maritime Administration is not available in our files.

You have also asked whether any of the products or services procured in any given year under the contracts analyzed either (*a*) were substantially different from products and services procured by this agency in previous years; or (*b*) were such that absence of prior production experience and cost data precluded relatively accurate initial pricing. Our records reveal that the construction of the NS *Savannah*, development of a maritime gas-cooled reactor, and design of a hydrofoil were substantially different from prior work so as to preclude relatively accurate initial pricing. The fiscal years, numbers, and dollar amounts involved are as follows:

Fiscal year	Numbers	Amount
1958	2	[1] $21,111,141
1959	1	337,078

[1] Obligated through Jan. 31, 1961.

With respect to the profit experience of contracts analyzed for which you asked, enclosed is a presentation of profit experience on contracts awarded by the Federal Maritime Board/Maritime Administration during the fiscal years 1956 and 1957 which have now been settled. with respect to the contracts analyzed, but not yet settled, it appears from our records that the returns on four contracts awarded in fiscal 1958 and one awarded in fiscal 1959, based upon the adjusted contract price, will range from an estimated 5-percent loss to an estimated 5-percent profit.

With respect to the level of fees permitted on our contracts, in the area of research and development our policy has been to allow a fixed fee not to exceed 10 percent of the total estimated cost of the work, with the actual fee subject to negotiation and is dependent on such factors as the type of work, the estimated total cost, and the relationship which direct labor costs bear to total costs. For example in study-type contracts the fixed fee has been approximately 7 percent.

You have also asked about the extent of overrun or underrun of estimated costs employed in initial pricing. In the area of research and development which includes substantially all our contracts where estimated costs are employed in pricing, an analysis of completed contracts reveals an overrun of 7.7 percent. Virtually all of this overrun resulted from the design contract for a hydrofoil, since, exclusive of the hydrofoil design contract, the total overrun is less than 2 percent on completed contracts.

An analysis of profit experience on ship repair contracts and subcontracts, involving fairly extensive research, is now nearly complete. Such analysis will be sent to you as soon as possible.

We trust the above contains the information you desire. If you have any further questions, please advise us.

Sincerely yours,

THOS. E. STAKEM, *Chairman.*

Contracts awarded by Federal Maritime Board/Maritime Administration during fiscal year 1956

	Number	Percentage of total	Dollars	Percentage of total
1. Method of placement: [1]				
Advertised	490	57.30	95,418,380.30	93.76
Negotiated [2]	365	42.70	6,347,434.16	6.24
Total	855	100.00	101,765,814.46	100.00
2. Compensation arrangement:				
Fixed price	9,512	99.00	104,902,838.46	99.62
Adjusted price				
Cost plus fixed fee or cost	6	1.00	395,443.00	.38
Total	9,518	100.00	105,298,281.46	100.00
3. Types of products and services:				
New ship construction	5	.05	71,326,970.00	67.74
Ship conversions	4	.04	19,021,445.00	18.06
Machinery alterations				
Administrative and reserve fleet expenses	9,109	95.70	4,943,840.00	4.70
Ship repair	394	4.14	9,610,583.46	9.12
Research and development:				
Studies	2	.02	105,000.00	.10
Ships, ship components	4	.04	290,443.00	.28
Total	9,518	100.00	105,298,281.46	100.00

[1] The analysis of "1. Method of placement" does not include 8,663 contracts representing a total amount of $3,532,467, since placement information concerning these contracts is not available at this time.
[2] Excluded from the negotiated contract category are 215 contracts representing a total amount of $2,586.

Contracts awarded by Federal Maritime Board/Maritime Administration during fiscal year 1957

	Number	Percentage of total	Dollars	Percentage of total
1. Method of placement: [1]				
Advertised	300	37.17	39,232,615.98	82.25
Negotiated [2]	507	62.83	8,467,111.51	17.75
Total	807	100.00	47,699,727.49	100.00
2. Compensation arrangement:				
Fixed price	11,057	99.94	35,401,696.49	67.29
Adjusted price	2	.02	16,625,255.00	31.60
Cost plus fixed fee or cost	4	.04	585,274.00	1.11
Total	11,063	100.00	52,612,225.49	100.00
3. Types of products and services:				
New ship construction	1	.01	11,416,034.00	21.70
Ship conversions	1	.01	5,209,221.00	9.90
Machinery alterations				
Administrative and reserve fleet expenses	10,707	96.78	6,880,320.00	13.08
Ship repair	348	3.14	28,215,426.49	53.63
Research and development:				
Studies	3	.03	514,204.00	.98
Ships, ship components	3	.03	377,020.00	.71
Total	11,063	100.00	52,612,225.49	100.00

[1] The analysis of "1. Method of placement" does not include 10,256 contracts representing a total amount of $4,912,498, since placement information concerning these contracts is not available at this time.
[2] Excluded from the negotiated contract category are 220 contracts representing a total amount of $2,663.

Contracts awarded by Federal Maritime Board/Maritime Administration during fiscal year 1958

	Number	Percentage of total	Dollars	Percentage of total
1. Method of placement: [1]				
Advertised	197	34.44	92,905,558.15	80.18
Negotiated [2]	375	65.56	22,963,495.38	19.82
Total	572	100.00	115,869,053.53	100.00
2. Compensation arrangement:				
Fixed price	8,138	99.83	39,324,071.09	33.37
Adjusted price	5	.06	73,010,033.00	61.96
Cost plus fixed fee or cost	9	.11	5,499,382.44	4.67
Total	8,152	100.00	117,833,486.53	100.00
3. Types of products and services:				
New ship construction	7	.08	89,986,012.00	76.37
Ship conversions				
Machinery alterations				
Administrative and reserve fleet expenses	7,997	98.10	3,531,352.00	3.00
Ship repair	129	1.59	1,697,430.09	1.44
Research and development:				
Studies	12	.15	863,840.44	.73
Ships, ship components	7	.08	21,754,852.00	18.46
Total	8,152	100.00	117,833,486.53	100.00

[1] The analysis of "1. Method of placement" does not include 7,580 contracts representing a total amount of $1,964,433, since placement information concerning these contracts is not available at this time.
[2] Excluded from the negotiated contract category are 261 contracts representing a total amount of $3,179.

Contracts awarded by Federal Maritime Board/Maritime Administration during fiscal year 1959

	Number	Percentage of total	Dollars	Percentage of total
1. Method of placement:[1]				
Advertised	132	23.36	84,411,800.29	96.92
Negotiated[2]	433	76.64	2,684,379.07	3.08
Total	565	100.00	87,096,179.36	100.00
2. Compensation arrangement:				
Fixed price	7,801	99.82	36,590,131.36	41.14
Adjusted price	3	.04	50,205,753.00	56.45
Cost plus fixed fee or cost	11	.14	2,141,678.00	2.41
Total	7,815	100.00	88,937,562.36	100.00
3. Types of products and services:				
New ship construction	4	.05	71,743,573.00	80.67
Ship conversions	3	.04	10,349,891.00	11.64
Machinery alterations				
Administrative and reserve fleet expenses	7,736	98.99	3,597,043.00	4.04
Ship repair	58	.74	984,781.36	1.11
Research and development:				
Studies	8	.10	735,417.00	.83
Ships, ship components	6	.08	1,526,857.00	1.71
Total	7,815	100.00	88,937,562.36	100.00

[1] The analysis of "1. Method of placement" does not include 7,250 contracts representing a total amount of $1,841,383, since placement information concerning these contracts is not available at this time.
[2] Excluded from the negotiated contract category are 259 contracts representing a total amount of $3,160.

Contracts awarded by Federal Maritime Board/Maritime Administration during fiscal year 1960

	Number	Percentage of total	Dollars	Percentage of total
1. Method of placement:[1]				
Advertised	83	15.06	92,035,416.35	96.32
Negotiated[2]	468	84.94	3,516,058.00	3.68
Total	551	100.00	95,551,474.35	100.00
2. Compensation arrangement:				
Fixed price	7,925	99.94	34,784,159.35	35.67
Adjusted price	4	.05	62,718,500.00	64.31
Cost plus fixed fee or cost	1	.01	15,039.00	.02
Total	7,930	100.00	97,517,698.35	100.00
3. Types of products and services:				
New ship construction	5	.07	89,353,718.00	91.63
Ship conversions	2	.03	1,456,308.00	1.49
Machinery alterations	1	.01	120,000.00	.12
Administrative and reserve fleet expenses	7,874	99.30	3,206,611.00	3.29
Ship repair	35	.44	456,406.35	.47
Research and development:				
Studies	8	.09	169,660.00	.17
Ships, ship components	5	.06	2,754,995.00	2.83
Total	7,930	100.00	97,517,698.35	100.00

[1] The analysis of "1. Method of placement" does not include 7,379 contracts representing a total amount of $1,966,224, since placement information concerning these contracts is not available at this time.
[2] Excluded from the negotiated contract category are 288 contracts representing a total amount of $3,252.

FEDERAL MARITIME BOARD,
Washington, D.C., March 24, 1961.

Hon. COLIN F. STAM,
Chief of Staff, Joint Committee on Internal Revenue Taxation,
Congress of the United States, Washington, D.C.

DEAR MR. STAM: In my letter to you dated March 21, 1961, which was a response to your letter of February 10, 1961, it was stated that information concerning profit experience on ship repair contracts and subcontracts was in the midst of preparation and would be sent to you as soon as possible.

The above-mentioned information has been prepared. Please find enclosed the analysis you requested with respect to profit experience on ship repair contracts and subcontracts.

Sincerely yours,

THOS. E. STAKEM, *Chairman.*

Enclosure.

Ship Repairs—Data Relative to Prime Contractors Job Orders Reports of Profit

Fiscal year ended June 30, 1956

Final contract price	Cost of performance	Profit or loss [1]	Percent to contract price [1]
$235,232.64	$227,915.28	$7,317.36	3.111
12,903.00	16,702.47	(3,799.47)	(29.446)
73,314.00	84,355.00	(11,041.00)	(15.060)
301,813.00	348,480.00	(46,667.00)	(15.462)
22,807.00	20,704.00	2,103.00	9.221
87,545.00	99,498.00	(11,953.00)	(13.654)
204,060.00	184,472.00	19,588.00	9.599
183,532.00	188,128.00	(4,596.00)	(2.504)
193,917.00	189,799.90	4,117.10	2.123
25,902.00	37,022.14	(11,120.14)	(42.932)
93,994.00	88,236.98	5,757.02	6.125
286,489.90	269,892.22	16,597.68	5.793
71,739.00	80,101.11	(8,362.11)	(11.656)
110,892.44	104,054.12	6,838.32	6.167
12,050.00	13,068.79	(1,018.79)	(8.455)
129,604.12	131,360.72	(1,756.60)	(1.355)
80,318.93	73,446.32	6,872.61	8.557
308,586.00	373,729.96	(65,143.96)	(21.110)
97,981.00	97,716.94	264.06	0.270
23,696.00	24,508.91	(812.91)	(3.431)
29,816.00	30,698.85	(882.85)	(2.961)
1,270.00	1,139.65	130.35	10.264
16,285.00	16,837.98	(552.98)	(3.396)
341,562.94	322,894.51	18,668.43	5.466
78,556.00	99,876.05	(21,320.05)	(27.140)
113,236.00	119,412.20	(6,176.20)	(5.454)
159,080.20	168,777.88	(9,697.68)	(6.096)
488,877.00	422,217.67	66,659.33	13.635
327,465.00	305,075.96	22,389.04	6.837
360,481.88	329,907.73	30,574.15	8.481
19,126.00	21,182.47	(2,056.47)	(10.752)
1,650.00	3,426.31	(1,776.31)	(107.655)
150,626.00	156,334.75	(5,708.75)	(3.790)
60,286.00	51,017.07	9,268.93	15.375
40,496.00	46,973.73	(6,477.73)	(15.996)
634,036.90	599,213.25	34,823.65	5.492
11,302.00	11,003.83	298.17	2.638
103,163.00	103,046.92	116.08	.113
447,748.48	439,758.31	7,990.17	1.785
25,666.00	24,939.94	726.06	2.829
130,917.00	135,008.82	(4,091.82)	(3.126)
44,217.75	48,370.12	(4,152.37)	(9.391)
23,252.00	18,980.93	4,271.07	18.369
455,889.04	516,047.42	(60,158.38)	(13.196)
8,389.00	8,842.46	(453.46)	(5.405)
214,033.31	244,619.38	(30,586.07)	(14.290)
247,229.00	235,872.27	11,356.73	4.594
873,078.68	664,088.68	208,990.00	23,937
141,094.00	145,689.00	(4,595.00)	(3.257)
30,929.00	30,797.89	131.11	.424
42,855.70	39,094.22	3,761.48	8.777
73,007.80	71,264.19	1,743.61	2.388
46,737.00	56,664.52	(9,927.52)	(21.241)
8,298,736.71	8,142,267.82	156,468.89	1.885

[1] Parentheses denote loss.

Fiscal year ended June 30, 1957

Final contract price	Cost of performance	Profit or loss [1]	Percent to contract price [1]
$194,986.70	$201,014.73	($6,028.03)	(3.092)
155,543.00	167,532.26	(11,989.26)	(7.708)
479,128.00	538,066.00	(58,938.00)	(12.301)
1,187,939.00	1,330,814.00	(142,875.00)	(12.027)
860,984.00	812,493.00	48,491.00	5.632
122,564.00	55,074.00	67,490.00	55.065
100,029.00	73,708.00	26,321.00	26.313
11,513.00	8,693.00	2,820.00	24.494
190,373.00	201,797.48	(11,424.48)	(6.001)
388,707.00	441,480.83	(52,773.83)	(13.577)
338,735.70	321,930.03	16,805.67	4.961
186,835.16	242,640.34	(55,805.18)	(29.869)
705,434.42	788,165.08	(82,730.66)	(11.728)
178,249.00	209,584.36	(31,335.36)	(17.580)
758,265.32	714,031.97	44,233.35	5.833
1,039,516.80	928,695.35	110,821.45	10.661
35,575.76	37,920.09	(2,344.33)	(6.590)
1,330,152.00	1,282,048.37	48,103.63	3.616
707,417.70	559,336.66	148,081.04	20.933
1,603,860.00	1,631,491.26	(27,631.26)	(1.723)
707,596.00	832,506.97	(124,910.97)	(17.653)
134,074.30	121,903.65	12,170.65	9.078
747,205.00	604,716.09	142,488.91	19.070
921,124.00	816,436.07	104,687.93	11.365
1,198,163.90	1,054,851.42	143,312.48	11.961
188,077.32	180,601.74	7,475.58	3.975
425,173.00	477,546.40	(52,373.40)	(12.318)
392,638.98	389,707.77	2,931.21	.747
47,072.00	44,378.28	2,693.72	5.723
436,496.00	423,744.09	12,751.91	2.921
299,760.24	289,263.68	10,496.56	3.502
1,382,779.91	1,184,865.83	197,914.08	14.313
16,303.00	15,030.53	1,272.47	7.805
508,004.00	586,793.18	(78,789.18)	(15.510)
670,262.00	806,963.26	(136,701.26)	(20.395)
473,286.00	593,795.18	(120,509.18)	(25.462)
403,253.50	459,723.45	(56,469.95)	(14.004)
986,335.72	1,036,394.20	(50,058.48)	(5.075)
189,343.00	188,171.00	1,172.00	.619
158,741.00	170,976.72	(12,235.72)	(7.708)
564,332.03	527,475.76	36,856.27	6.531
217,951.42	196,367.72	21,583.70	9.903
516,640.22	504,902.65	11,737.57	2.272
22,160,421.10	22,053,632.45	106,788.65	.482

[1] Parentheses denote loss.

Fiscal year ending June 30, 1958

Final contract price	Cost of performance	Profit or loss [1]	Percent to contract price [1]
$41,150.07	$58,035.04	($16,884.97)	(41.033)
62,543.00	64,637.51	(2,094.51)	(3.349)
7,077.00	3,453.00	3,624.00	51.208
30,146.00	46,305.00	(16,159.00)	(53.602)
100,305.00	120,111.00	(19,806.00)	(19.746)
21,637.00	15,856.00	5,781.00	206.718
5,090.00	5,784.88	(694.88)	(13.652)
58,963.69	57,695.86	1,267.83	2.150
92,234.95	130,011.64	(37,776.69)	(40.957)
24,157.00	57,044.72	(32,887.72)	(136.142)
86,796.00	62,292.28	24,503.72	28.231
34,471.00	29,497.97	4,973.03	14.427
194,170.00	242,057.81	(47,887.81)	(24.663)
45,860.29	42,066.13	3,794.16	8.273
75,209.03	72,619.60	2,589.43	3.443
12,442.00	13,502.71	(1,060.71)	(8.525)
15,648.00	19,997.36	(4,349.36)	(27.795)
83,319.11	99,386.51	(16,067.40)	(19.284)
28,181.00	30,916.00	(2,735.00)	(9.705)
43,952.00	52,139.47	(8,187.47)	(18.628)
53,292.00	83,113.94	(29,821.94)	(55.960)
10,210.00	12,775.31	(2,565.31)	(25.125)
73,988.00	89,534.47	(15,546.47)	(21.012)
1,200,842.14	1,408,834.21	(207,992.07)	(17.321)

[1] Parentheses denote loss.

Fiscal year ending June 30, 1959

Final contract price	Cost of performance	Profit or loss [1]	Percent to contract price [1]
$13,049.00	$13,483.73	($434.73)	(3.332)
35,718.00	39,670.00	(3,952.00)	(11.064)
47,455.00	49,488.00	(2,033.00)	(4.284)
12,921.00	12,487.00	434.00	3.359
25,522.00	28,451.00	(2,929.00)	(11.476)
80,018.00	60,695.00	19,323.00	24.148
3,370.00	3,401.00	(31.00)	(.920)
25,170.00	14,502.18	10,667.82	42.383
7,323.38	6,089.34	1,234.04	16.851
44,159.00	28,140.15	16,018.85	36.275
147,881.00	159,645.47	(11,764.47)	(7.955)
98,952.30	94,419.81	4,532.49	4.580
23,862.00	27,220.63	(3,358.63)	(14.075)
13,299.00	15,763.45	(2,464.45)	(18.531)
100,600.00	80,055.14	20,544.86	20.422
2,230.00	2,561.00	(331.00)	(14.843)
28,021.75	32,179.87	(4,158.12)	(14.839)
24,745.00	16,395.00	8,350.00	33.744
9,798.00	11,202.23	(1,404.23)	(14.332)
85,271.55	75,981.54	9,290.01	10.896
829,365.98	771,831.54	57,534.44	6.937

[1] Parentheses denote loss.

Fiscal year ending June 30, 1960

Final contract price	Cost of performance	Profit or loss [1]	Percent to contract price [1]
$18,479.00	$22,973.00	($4,494.00)	(24.319)
9,970.00	12,855.36	(2,885.36)	(28.940)
840.00	955.18	(115.18)	(13.712)
14,285.00	17,729.00	(3,444.00)	(24.109)
29,066.00	21,329.06	7,736.94	26.619
7,715.00	7,700.00	15.00	.194
97,895.35	103,116.37	(5,221.02)	(5.333)
178,250.35	186,657.97	(8,407.62)	(4.717)

[1] Parentheses denote loss.

SHIP REPAIRS—DATA RELATIVE TO SUBCONTRACTORS REPORTS OF PROFIT

Fiscal year ending June 30, 1956

Final contract price	Cost of performance	Profit or loss [1]	Percent to contract price [1]
$56,992.98	$53,868.96	$3,124.02	5.481
20,242.00	19,941.28	300.72	1.486
11,130.98	13,529.37	(2,398.39)	(21.547)
17,500.00	15,777.41	1,722.59	9.843
40,944.48	37,772.09	3,172.39	7,748
15,210.57	15,985.98	(775.41)	(5.098)
10,829.44	9,767.28	1,062.16	9.808
14,278.77	14,133.67	145.10	1,016
11,729.38	10,829.44	899.94	7.673
18,629.20	17,547.88	1,081.32	5.804
11,926.95	11,195.75	731.20	6.131
11,243.52	10,741.29	502.23	4.467
18,536.70	17,300.23	1,236.47	6.670
28,500.00	25,961.03	2,538.97	8.909
50,273.06	49,352.99	920.07	1.830
54,603.88	55,108.16	(504.28)	(.924)
41,554.82	41,938.07	(383.25)	(.922)
434,126.73	420,750.88	13,375.85	3.081

[1] Parentheses denote loss.

Fiscal year ending June 30, 1957

Final contract price	Cost of performance	Profit or loss [1]	Percent to contract price [1]
$25,690.00	$26,257.80	($567.80)	(2.210)
16,638.00	14,943.12	1,694.88	10.187
46,003.00	52,629.22	(6,626.22)	(14.404)
10,735.15	9,807.95	927.20	8.637
10,002.40	9,437.18	565.22	5.651
10,400.00	10,317.30	82.70	.795
269,680.26	266,258.06	3,422.20	1.269
17,537.31	16,854.60	682.71	3.893
26,366.00	23,687.96	2,678.04	10.157
59,664.00	46,934.00	12,730.00	21.336
16,243.00	15,454.72	788.28	4.853
22,172.21	22,183.30	(11.09)	(.050)
13,120.00	13,991.08	(871.08)	(6.639)
45,119.75	41,446.02	3,673.73	8.142
30,005.00	28,866.68	1,138.32	3.794
41,012.00	67,862.35	(26,850.35)	(65.469)
31,115.00	33,328.12	(2,213.12)	(7.113)
13,762.00	13,022.26	739.74	5.375
24,595.00	24,405.11	189.89	.772
24,525.00	17,499.03	7,025.97	28.648
14,768.00	13,318.00	1,450.00	9.819
12,509.00	12,147.32	361.68	2.891
34,667.37	32,661.86	2,005.51	5.785
70,370.00	70,700.74	(330.74)	(.470)
137,502.00	140,827.81	(3,325.81)	(2.419)
50,415.12	49,718.78	696.34	1.381
106,433.00	127,304.23	(20,871.23)	(19.610)
60,935.00	81,986.67	(21,051.67)	(34.548)
49,230.00	55,122.08	(5,892.08)	(11.968)
207,978.00	242,250.25	(34,272.25)	(16.479)
30,371.80	37,064.43	(6,692.63)	(22.036)
31,443.00	32,930.31	(1,487.31)	(4.730)
46,760.00	49,357.27	(2,597.27)	(5.554)
1,607,767.37	1,700,575.61	(92,808.24)	(5.772)

[1] Parentheses denote loss.

Fiscal year ending June 30, 1958

Final contract price	Cost of performance	Profit or loss [1]	Percent to contract price [1]
$19,950.00	$21,638.65	($1,688.65)	(8.464)
20,005.00	20,446.04	(441.04)	(2.205)
39,955.00	42,084.69	(2,129.69)	(5.330)

[1] Parentheses denote loss.

APPENDIX E

INFORMATION RELATING TO ATOMIC ENERGY COMMISSION CONTRACTS

U.S. ATOMIC ENERGY COMMISSION,
Washington, D.C., February 27, 1961.

Mr. COLIN F. STAM,
Chief of Staff, Joint Committee on Internal Revenue Taxation, Congress of the United States.

DEAR MR. STAM: Reference is made to your letter of February 10, 1961, addressed to Mr. James P. Gerety, requesting information for use in connection with the study of renegotiation being made by the Joint Committee on Internal Revenue Taxation, pursuant to section 4(b) of Public Law 86–89.

The Atomic Energy Commission procurement and contracting function is decentralized to 12 operations offices. While we maintain a contract reporting system at headquarters, the statistical information available through tbis system is limited as explained in the telephone conversation between Mr. Gerety of this office and Mr. Kerester of your office.

Summaries of contract actions, which term includes original contracts, modifications, amendments, and supplemental agreements, for fiscal years 1956–60 for both prime and subcontracts under cost-type prime contracts are attached hereto (attachment A). They are broken down to show the number of contract actions with the total dollar amount of such actions for construction, architect-engineer, material supplies and equipment for construction, research and development, rents and utility services, material, supplies and equipment other than construction, and services other than utilities. This last category which has the largest dollar total includes cost-type operating contracts such as the Du Pont contract for the operation of the Savannah River plant, Union Carbide Nuclear Co. contract for the operation of the Oak Ridge complex, General Electric Co. contracts for the operation of the Hanford Works at Richland, Wash. These statistics are further broken down to show number and dollar amount to other Government agencies, small business, big business, and educational and other nonprofit institutions. The division between fixed-price and cost-type contracts, and the division between advertised, negotiated competitive and negotiated concompetitive are shown on a separate summary (attachment B). We do not have a breakdown of fixed-price contracts with price-redetermination clauses or escalation clauses. Such contracts are very limited in number.

At the prime contract level, during the fiscal years 1956–60, 83 to 88 percent of the total dollars were under cost-type contracts. Some of these contracts carry no fee or a nominal fee of $1, as in the case of Du Pont; others carry fixed fees generally within our fee range policy. The maximum fixed fees that a manager of operations can negotiate without approval of headquarters are as follows:

Supply contracts: 7 percent of the estimated cost.

Research and development operating contracts in Government-owned facilities: 10 percent of the estimated cost.

Production operating contracts in Government-owned facilities: 7 percent of the estimated cost.

Research and development contracts in commercial facilities: 10 percent of the estimated cost.

Architect-engineer contracts: 4 percent of the estimated cost of construction.

Cost-plus-fixed-fee construction contracts: 6 percent of the estimated cost of construction.

Procurement of equipment for construction: 1.50 percent of estimated cost.

The above fees decline as the estimated costs increase. The number of contracts with fees in excess of our established fee policy are negligible.

We, of course, have a large number of contracts for new items where it is impossible to determine the cost in advance. This accounts for the large dollar amount of our prime cost-type contracts. In these situations, we generally use a cost-plus-a-fixed-fee contract with close administrative controls on the contractor's expenditures. The products and services are basically the same for each of the fiscal years 1956–60.

We do not have readily available information with respect to overruns or underruns on cost-plus-a-fixed-fee contracts. The fee which includes the contractor's profit, of course, does not change because of such overruns or underruns of estimated costs. We do not have readily available detailed information with respect to profit earned on renegotiable contracts shown in terms of a percentage of renegotiable sales before renegotiation. We believe such information is available from the Renegotiation Board.

We trust that you will find the above information of assistance to you in your study.

Sincerely yours,

DWIGHT INK,
Assistant General Manager.

Enclosures:

1. Attachment A.
2. Attachment B.

66858—62——9

ATTACHMENT A

U.S. ATOMIC ENERGY COMMISSION—FISCAL YEAR 1956 SUMMARY OF CONTRACT AWARDS AND CHANGES

Cost-type and fixed-price actions combined—Prime actions by AEC

Type of work	Government agency		Small business		Big business		Educational and other nonprofit institutions		Total, all classes	
	Number	Total value	Number	Total value	Number	Total value	Number	Total value	Number	Total value
Construction	9	$4,555,150	398	$21,975,062	107	$67,340,081	3	$1,025,000	517	$94,895,293
Architect-engineer	1	1,296	63	1,868,001	61	11,788,777			125	13,658,074
Materials, supplies, and equipment for construction	43	8,965,802	23	109,978	88	3,802,815			154	12,878,595
Subtotal	53	13,522,248	484	23,953,041	256	82,931,673	3	1,025,000	796	121,431,962
Percent of subtotal	6.7	11.1	60.8	19.7	32.1	68.3	0.4	0.9	100	100
Research and development	55	$5,781,053	21	$792,213	206	$83,006,198	729	$134,311,080	1,011	$223,890,544
Rents and utility services	186	123,074,256	92	317,803	945	112,515,607			1,223	235,907,666
Materials, supplies, and equipment other than construction	5,048	8,637,360	4,805	5,361,708	3,908	59,581,889	42	544,661	13,803	74,125,618
Services other than utility services	559	26,898,604	607	9,079,588	274	523,947,362	46	5,845,945	1,486	565,771,499
Total	5,901	177,913,521	6,009	39,504,353	5,589	861,982,729	820	141,726,686	18,319	1,221,127,289
Percentage of total	32.2	14.6	32.8	3.2	30.5	70.6	4.5	11.6	100	100
Actions by cost category, 0–$24									6,675	$68,238

Subcontract actions by AEC cost-type prime contractors

Type of work	Government agency		Small business		Big business		Educational and other nonprofit institutions		Total, all classes	
	Number	Total value	Number	Total value	Number	Total value	Number	Total value	Number	Total value
Construction			804	$18,713,263	202	$16,809,713			1,006	$35,522,976
Architect-engineer			34	784,316	10	2,181,831	14	$85,808	58	3,051,955
Materials, supplies, and equipment for construction	566	$831,117	32,105	60,827,300	13,163	49,203,474	1	24,380	45,835	110,886,271
Subtotal	566	831,117	32,943	80,324,879	13,375	68,195,018	15	110,188	46,899	149,461,202
Percent of subtotal	1.2	0.6	70.2	53.8	28.6	45.6			100	100
Research and development	7	$399,615	198	$3,142,599	174	$10,209,929	73	$2,144,153	452	$15,896,296
Rents and utility services	2	3,000	214	3,545,359	478	8,170,037	81	294,870	775	12,013,266
Materials, supplies, and equipment other than construction	4,331	6,351,599	195,233	119,166,420	96,288	145,715,572	928	827,474	296,780	272,061,065
Services other than utility services	129	587,035	3,927	4,897,563	1,402	6,004,156	428	848,789	5,886	12,337,543
Total	5,035	8,172,366	232,515	211,076,820	111,717	238,294,712	1,525	4,225,474	350,792	461,769,372
Percentage of total	1.4	1.8	66.3	45.7	31.8	51.6	0.5	0.9	100	100
Actions by cost category, 0–$24									134,938	$1,458,823

Source: Reports and Statistics Branch, Division of Construction and Supply.

U.S. Atomic Energy Commission—Fiscal Year 1957 Summary of Contract Awards and Changes

Cost-type and fixed-price actions combined—Prime actions by AEC

Type of work	Government agency		Small business		Big business		Educational and other nonprofit institutions		Total, all classes	
	Number[1]	Total value	Number[1]	Total value	Number[1]	Total value	Number[1]	Total value	Number[1]	Total value
Construction	3	$2,937,000	674	$37,512,707	149	$74,362,963	4	$6,575,000	830	$121,387,670
Architect-engineer	6	254,425	99	2,863,366	97	7,854,862			202	10,972,653
Materials, supplies, and equipment for construction	4	2,817	20	199,945	22	1,010,096			46	1,212,858
Subtotal	13	3,194,242	793	40,576,018	268	83,227,921	4	6,575,000	1,078	133,573,181
Percent of subtotal	1.2	2.4	73.6	30.4	24.9	62.3	0.3	4.9	100	100
Research and development	59	$7,192,659	23	$3,356,387	205	$288,794,401	937	$171,675,375	1,224	$471,058,822
Rents and utility service	122	128,759,700	83	111,673	1,125	108,000,430			1,330	236,871,803
Materials, supplies, and equipment other than construction	2,646	8,969,241	4,326	14,663,491	3,736	98,166,760	40	2,644	10,748	121,802,136
Services other than utility services	603	38,278,626	619	49,395,649	374	731,551,535	76	29,348,661	1,672	848,574,471
Total	3,443	186,394,468	5,844	108,143,218	5,708	1,109,741,047	1,057	207,601,680	16,052	1,811,880,413
Percent of total	21.4	10.3	36.4	5.9	35.6	72.3	6.6	11.5	100	100
Actions by cost category, 0–$24									6,399	$65,245

[1] Number of actions includes original contracts, modifications, amendments and supplemental agreements.

Subcontract actions by AEC cost-type prime contractors

Type of work	Government agency		Small business		Big business		Educational and other nonprofit institutions		Total, all classes	
	Number [1]	Total value	Number [1]	Total value	Number [1]	Total value	Number [1]	Total value	Number [1]	Total value
Construction	15	$7,913	1,165	$21,634,087	147	$24,744,632			1,327	$46,386,632
Architect-engineer			59	1,547,746	20	3,573,615	10	$189,438	89	5,310,799
Materials, supplies, and equipment for construction	707	1,378,019	31,572	37,235,673	14,145	47,376,471	10	17,955	46,434	86,008,118
Subtotal	722	1,385,932	32,796	60,417,506	14,312	75,694,718	20	207,393	47,850	137,705,549
Percent of subtotal	1.5	1	68.6	43.9	29.9	55		0.1	100	100
Research and development	61	$1,898,706	359	$7,104,847	344	$27,670,161	106	$2,759,137	870	$39,432,851
Rents and utility services	2	60,000	229	2,721,143	950	11,600,478	173	698,013	1,354	15,079,631
Materials, supplies, and equipment other than construction	17,594	24,279,393	239,734	148,360,816	119,265	192,783,022	1,183	1,511,788	377,776	366,935,019
Services other than utility services	189	1,886,461	4,263	5,698,380	1,238	5,957,706	718	1,547,437	6,408	15,089,984
Total	18,568	29,510,492	277,381	224,302,692	136,109	313,706,085	2,200	6,723,768	434,258	574,243,037
Percentage of total	4.3	5.1	63.9	39.1	31.3	54.6	0.5	1.2	100	100
Actions by cost category, 0–$24									149,475	$1,669,848

[1] Number of actions includes original contracts, modifications, amendments, and supplemental agreements.

Source: Reports and Statistics Branch, Division of Construction and Supply.

U.S. Atomic Energy Commission—Fiscal Year 1958 Summary of Contract Awards and Changes

Cost-type and fixed-price actions combined—Prime actions by AEC

Type of work	Government agency		Small business		Big business		Educational and other nonprofit institutions		Total, all classes	
	Number [1]	Total value	Number [1]	Total value	Number [1]	Total value	Number [1]	Total value	Number [1]	Total value
Construction	1	$16,000	705	$40,216,368	226	$39,477,073	4	$4,650,000	936	$84,359,441
Architect-engineer	3	113,076	141	3,129,848	136	11,881,041	----------	----------	280	15,123,965
Materials, supplies, and equipment for construction	18	75,712	48	310,637	32	4,212,382	----------	----------	98	4,598,731
Subtotal	22	204,788	894	43,656,853	394	55,570,496	4	4,650,000	1,314	104,082,137
Percent of subtotal	2	0.1	68	42	30	53.4	----------	4.5	100	100
Research and development	89	$7,913,838	37	$1,547,862	190	$253,556,619	998	$255,985,091	1,314	$519,003,410
Rents and utility services	63	112,982,702	45	72,068	414	105,875,281	----------	----------	522	218,930,051
Materials, supplies, and equipment other than construction	3,046	10,947,792	4,233	30,314,453	3,461	350,407,732	59	5,526	10,799	391,675,503
Services other than utility services	501	38,089,582	685	27,277,635	456	799,265,802	104	21,937,048	1,746	886,570,067
Total	3,721	170,138,702	5,894	102,868,871	4,915	1,564,675,930	1,165	282,577,665	15,695	2,120,261,168
Percentage of total	23.7	8	37.5	4.9	31.3	73.8	7.5	13.3	100	100
Actions by cost category, 0–$24	----------	----------	----------	----------	----------	----------	----------	----------	5,582	$61,151

[1] Number of actions includes original contracts, modifications, amendments, and supplemental agreements.

Subcontract actions by AEC cost-type prime contractors

Type of work	Government agency		Small business		Big business		Educational and other nonprofit institutions		Total, all classes	
	Nnmber[1]	Total value	Number[1]	Total value	Number[1]	Total value	Number[1]	Total value	Number[1]	Total value
Construction	2	$67	1,237	$14,652,904	207	$17,167,116	5	$39,000	1,451	$31,859,087
Architect-engineer			16	413,837	9	2,076,718	5	84,014	30	2,574,569
Materials, supplies, and equipment for construction	645	1,847,735	22,367	31,868,136	11,071	30,253,945	80	415,778	34,163	64,385,594
Subtotal	647	1,847,802	23,620	46,934,877	11,287	49,497,779	90	538,792	35,644	98,819,250
Percent of subtotal	1.8	1.9	66.3	47.5	31.7	50.1	0.2	0.5	100	100
Research and development	5	$95,300	269	$4,447,394	249	$15,063,577	109	$4,343,379	632	$23,949,650
Rents and utility services	6	26,428	221	409,619	482	15,582,505	40	914,866	749	16,933,418
Materials, supplies, and equipment other than construction	28,364	4,749,910	233,851	158,820,269	121,819	228,640,634	1,071	798,961	385,105	393,009,774
Services other than utility services	82	368,698	3,600	5,359,653	1,476	10,494,076	798	1,033,883	5,956	17,256,310
Total	29,104	7,088,138	261,561	215,971,812	135,313	319,278,571	2,108	7,629,881	428,086	549,968,402
Percentage of total	6.8	1.3	61.1	39.3	31.6	58	0.5	1.4	100	100
Actions by cost category, 0 to $24									131,065	$2,375,731

[1] Number of actions includes original contracts, modifications, amendments, and supplemental agreements.

Source: Reports and Statistics Branch, Division of Construction and Supply.

U.S. Atomic Energy Commission—Fiscal Year 1959 Summary of Contract Awards and Changes

Cost-type and fixed-price actions combined—Prime actions by AEC

Type of work	Government agency		Small business		Big business		Educational and other nonprofit institutions		Total, all classes	
	Number [1]	Total value	Number [1]	Total value	Number [1]	Total value	Number [1]	Total value	Number [1]	Total value
Construction	16	$162,334	989	$49,389,406	252	$73,790,999	7	$8,263,557	1,264	$131,606,296
Architect-engineer	17	1,342,395	172	3,520,835	127	16,617,201	1	20,000	317	21,500,431
Materials, supplies, and equipment for construction	14	82,940	34	2,678,788	43	12,122,891	6	1,128,888	97	16,013,507
Subtotal	47	1,587,669	1,195	55,589,029	422	102,531,091	14	9,412,445	1,678	169,120,234
Percent of subtotal	2.8	0.9	71.2	32.9	25.2	60.6	0.8	5.6	100	100
Research and development	65	$9,204,443	77	$6,356,395	232	$313,719,067	1,132	$309,936,380	1,506	$639,216,285
Rents and utility services	31	112,162,984	29	63,396	177	104,664,907	6	9,137	243	216,900,424
Materials, supplies, and equipment other than construction	1,426	76,295,865	4,504	62,885,339	3,831	332,382,048	42	7,539	9,803	471,570,791
Services other than utility services	350	16,586,029	666	19,591,146	455	797,433,540	110	33,266,125	1,581	866,876,840
Total	1,919	215,836,990	6,471	144,485,305	5,117	1,650,430,653	1,304	352,631,626	14,811	2,363,684,574
Percent of total	13	9.2	43.8	6.1	34.4	69.8	8.8	14.9	100	100
Actions by cost category, 0–$24									4,368	$91,545

[1] Number of actions includes original contracts, modifications, amendments and supplemental agreements.

Subcontract actions by AEC cost-type prime contractors

Type of work	Government agency		Small business		Big business		Educational and other nonprofit institutions		Total, all classes	
	Number[1]	Total value	Number[1]	Total value	Number[1]	Total value	Number[1]	Total value	Number[1]	Total value
Construction			1,420	$15,666,918	145	$3,803,406	5	$26,320	1,570	$19,496,644
Architect-engineer			27	728,882	10	709,276			37	1,438,158
Materials, supplies, and equipment for construction	398	$348,752	18,074	18,229,821	9,916	16,104,234	57	51,713	28,445	34,734,520
Subtotal	398	348,752	19,521	34,625,621	10,071	20,616,916	62	78,033	30,052	55,669,322
Percent of subtotal	1.3	0.6	65	62.2	33.5	37	0.2	0.2	100	100
Research and development	1	$135,000	273	$2,936,522	276	$13,461,805	91	$3,407,791	641	$19,941,118
Rents and utility services	1	5,000	172	632,155	373	16,625,050	44	1,313,749	590	18,575,954
Materials, supplies, and equipment other than construction	6,837	4,462,184	279,571	174,098,963	131,986	227,588,279	1,267	1,214,405	419,661	407,363,831
Services other than utility services	96	411,489	3.967	8,211,541	2,250	18,013,076	845	2.097,499	7.158	28,733,605
Total	7,333	5,362,425	303,504	220,504,802	144,956	296,305,126	2,309	8,111,477	458,102	530,283,830
Percentage of total	1.6	1	66.3	41.6	31.6	55.9	0.5	1.5	100	100
Actions by cost category, 0–$24									151,925	$2,197,825

[1] Number of actions includes original contracts, modifications, amendments, and supplemental agreements.

Source: Office of Contract Policy.

U.S. Atomic Energy Commission—Fiscal year 1960 summary of contract awards and changes, cost-type and fixed-price actions combined—Prime actions by AEC

Type of work	Government agency		Small business		Big business		Educational and other nonprofit institutions		Total, all classes	
	Number [1]	Total value	Number [1]	Total value	Number [1]	Total value	Number [1]	Total value	Number [1]	Total value
Construction	8	$52,368	1,125	$51,233,948	259	$145,801,892	2	$2,296,908	1,394	$199,385,116
Architect-engineer	3	88,000	212	4,301,561	122	15,456,590	51	1,166,797	388	21,012,948
Materials, supplies, and equipment for construction	20	405,587	39	267,668	113	5,253,687			172	5,926,942
Subtotal	31	545,955	1,376	55,803,177	494	166,512,169	53	3,463,705	1,954	226,325,006
Percent of subtotal	1.6	0.2	70.4	24.6	25.3	73.6	2.7	1.6	100	100
Research and development	80	$10,494,794	71	$7,812,426	292	$268,283,772	1,186	$294,342,968	1,629	$580,933,960
Rents and utility services	50	114,744,453	43	61,136	211	106,301,485	9	419,908	313	221,526,982
Materials, supplies, and equipment other than construction	1,706	128,929,897	4,399	348,909,837	4,038	573,713,613	29	10,449	10,172	1,051,563,796
Services other than utility services	350	59,566,810	682	6,272,366	386	868,188,997	94	38,941,330	1,512	972,969,503
Total	2,217	314,281,909	6,571	418,858,942	5,421	1,983,000,036	1,371	337,178,360	15,580	3,053,319,247
Percent of total	14.2	10.3	42.2	13.7	34.8	64.9	8.8	11.1	100	100
Actions by cost category, 0–$24									4,650	$50,871

[1] Number of actions includes original contracts, modifications, amendments, and supplemental agreements.

Subcontract actions by AEC cost-type prime contractors

Type of work	Government agency		Small business		Big business		Educational and other nonprofit institutions		Total, all classes	
	Number [1]	Total value	Number [1]	Total value	Number [1]	Total value	Number [1]	Total value	Number [1]	Total value
Construction	21	$1,599	3,701	$25,116,509	649	$13,891,557			4,371	$39,009,665
Architect-engineer			70	1,631,587	24	4,577,818	2	$2,589	96	6,211,994
Materials, supplies, and equipment for construction	340	223,514	17,452	24,741,443	6,792	41,189,998	58	11,280	24,642	66,166,235
Subtotal	361	225,113	21,223	51,489,539	7,465	59,659,373	60	13,869	29,109	111,387,894
Percent of subtotal	1.2	0.2	72.9	46.2	25.7	53.6	0.2		100	100
Research and development			112	$1,696,000	191	$15,185,743	134	$3,198,813	437	$20,080,556
Rents and utility services	2	$13,295	171	646,724	287	15,915,182	52	1,446,003	512	18,021,204
Materials, supplies, and equipment other than construction	5,178	3,723,708	307,052	196,511,812	137,334	235,815,250	1,250	1,662,303	450,814	437,713,073
Services—other than utility services	183	853,453	4,901	12,514,367	2,681	21,418,375	983	2,213,535	8,748	36,999,730
Total	5,724	4,815,569	333,459	262,858,412	147,958	347,993,923	2,479	8,534,523	489,620	624,202,457
Percentage of total	1.2	0.8	68.1	42.1	30.2	55.7	0.5	1.4	100	100
Actions by cost category, 0–$24									149,564	$1,962,821

[1] Number of actions includes original contracts, modifications, amendments, and supplemental agreements.

Source: Office of Contract Policy.

Attachment B

Summary of contract actions on basis of method of procurement and type of contract, fiscal year 1956

	Prime—Fixed price		Prime—Cost type	
	Number of actions [1]	Dollar value	Number of actions [1]	Dollar value
Construction:				
Interdepartmental	7	$284,150	2	$4,271,000
Advertised	372	46,591,789	1	1,000
Negotiated, complete	10	635,375	5	26,114,000
Negotiated, noncomplete	92	931,895	28	16,066,084
Total	481	48,443,209	36	46,452,084
Materials, supplies, and equipment for construction:				
Intracompany or interdepartmental	43	8,965,802	----------	----------
Government schedule	21	30,705	----------	----------
Advertised	24	1,098,162	----------	----------
Negotiated, complete	43	1,475	----------	----------
Negotiated, noncomplete	23	2,782,451	----------	----------
Total	154	12,878,595	----------	----------
Materials, supplies, and equipment other than construction:				
Intracompany or interdepartmental	5,046	8,626,254	2	11,106
Government schedule	2,581	1,553,265	----------	----------
Advertised	665	5,810,123	----------	----------
Negotiated, complete	3,651	23,000,783	4	5,262,068
Negotiated, noncomplete	1,844	23,595,476	10	6,266,543
Total	13,787	62,585,901	16	11,539,717
Services other than utility services:				
Intracompany or interdepartmental	378	2,682,961	181	24,215,643
Government schedule	151	198,483	----------	----------
Advertised	97	781,513	----------	----------
Negotiated, complete	98	155,590	6	15,424,505
Negotiated, noncomplete	497	11,105,400	78	511,207,404
Total	1,221	14,923,947	265	550,847,552
Other negotiated, noncomplete:				
Architect-engineer	84	2,885,189	41	10,772,885
Research and development	762	11,026,653	249	212,863,891
Rents and utility services	1,217	231,348,090	6	4,559,576
Recapitulation:				
Intracompany or interdepartmental	5,669	143,988,989	232	33,924,532
Government schedule	2,753	1,782,453	----------	----------
Advertised	1,158	54,281,587	1	1,000
Negotiated, complete	3,802	23,793,223	15	46,800,573
Negotiated, noncomplete	4,324	160,245,332	365	756,309,600
Total	17,706	384,091,584	613	837,035,705

[1] Number of actions included original contracts, modifications, amendments, and supplemental agreements.

Summary of subcontract actions on basis of method of procurement and type of contract, fiscal year 1956

	Sub—Fixed price		Sub—Cost price	
	Number of actions [1]	Dollar value	Number of actions [1]	Dollar value
Construction:				
Interdepartmental				
Advertised	265	$11,490,344		
Negotiated, complete	438	5,396,689	8	$4,610,471
Negotiated, noncomplete	271	2,266,193	24	11,759,279
Total	974	19,153,226	32	16,369,750
Materials, supplies, and equipment for construction:				
Intracompany or interdepartmental	626	3,700,945	115	197,865
Government schedule	925	883,532		
Advertised	3,505	19,169,549		
Negotiated, complete	26,115	58,014,178	14	55,129
Negotiated, noncomplete	14,473	12,264,068	62	16,601,005
Total	45,644	94,032,272	191	16,853,999
Materials, supplies, and equipment, other than construction:				
Intracompany or interdepartmental	5,897	8,491,144	401	5,037,560
Government schedule	8,401	7,759,593	4	84,838
Advertised	1,031	2,753,725		
Negotiated, complete	159,509	160,708,492	122	3,505,568
Negotiated, noncomplete	121,219	71,816,624	196	11,903,521
Total	296,057	251,529,578	723	20,531,487
Services, other than utility services:				
Intracompany or interdepartmental	317	876,686	11	112,860
Government schedule	215	213,528	2	4,030
Advertised	33	430,425		
Negotiated, complete	1,325	2,220,096	20	1,030,599
Negotiated, noncomplete	3,828	5,483,201	135	1,966,118
Total	5,718	9,223,936	168	3,113,607
Other negotiated, noncomplete:				
Architect-engineer	40	392,749	18	2,659,206
Research and development	237	2,798,067	215	13,098,229
Rents and utility services	655	11,319,663	120	693,603
Recapitulation:				
Intracompany or interdepartmental	6,848	13,426,390	528	5,393,285
Government schedule	9,541	8,856,653	6	88,868
Advertised	4,834	33,844,043		
Negotiated, complete	187,387	226,339,455	164	9,201,767
Negotiated, noncomplete	140,715	105,982,950	769	58,635,961
Total	349,325	388,449,491	1,467	73,319,881

[1] Number of actions includes original contracts, modifications, amendments, and supplemental agreements.

Summary of contract actions on basis of method of procurement and type of contract, fiscal year 1957

	Prime—Fixed price		Prime—Cost type	
	Number of actions [1]	Dollar value	Number of actions [1]	Dollar value
Construction:				
Interdepartmental	2	$64,000	1	$2,873,000
Advertised	620	45,143,090		
Negotiated, complete	42	1,220,893	18	11,032,635
Negotiated, noncomplete	118	1,076,175	29	59,977,877
Total	782	47,504,158	48	73,883,512
Materials, supplies, and equipment for construction:				
Intracompany or interdepartmental	4	2,817		
Government schedule	5	28,299		
Advertised	12	218,042		
Negotiated, complete	5	84,069		
Negotiated, noncomplete	17	482,130	3	397,501
Total	43	815,357	3	397,501
Materials, supplies, and equipment other than construction:				
Intracompany or interdepartmental	2,643	8,929,557	3	39,684
Government schedule	1,430	925,876		
Advertised	1,060	12,463,376		
Negotiated, complete	3,645	23,599,131	1	567,476
Negotiated, noncomplete	1,956	38,699,235	10	36,577,801
Total	10,734	84,617,175	14	37,184,961
Services other than utility services:				
Intracompany or interdepartmental	435	1,368,858	168	33,909,768
Government schedule	182	88,702	1	1,568
Advertised	40	118,642	1	7,688
Negotiated, complete	148	293,553	33	77,608,732
Negotiated, noncomplete	558	7,097,376	106	725,079,584
Total	1,363	8,967,131	309	839,607,340
Other negotiated, noncomplete:				
Architect engineer	137	2,873,303	65	8,099,350
Research and development	866	25,044,019	358	446,014,803
Rents and utility services	1,323	236,805,740	7	66,063
Recapitulation:				
Intracompany or interdepartmental	3,211	140,283,045	232	46,111,423
Governmental schedule	1,617	1,042,877	1	1,568
Advertised	1,732	57,943,150	1	7,688
Negotiated, complete	3,840	25,197,646	52	89,208,843
Negotiated, noncomplete	4,848	182,160,165	518	1,269,924,008
Total	15,248	406,626,883	804	1,405,253,530

[1] Number of actions includes original contracts, modifications, amendments, and supplemental agreements.

Summary of subcontract actions on basis of method of procurement and type of contract, fiscal year 1957

	Sub—Fixed price		Sub—Cost price	
	Number of actions [1]	Dollar value	Number of actions [1]	Dollar value
Construction:				
Interdepartmental	15	$7,913		
Advertised	314	11,328,072		
Negotiated, complete	728	10,547,344	14	$4,440,894
Negotiated, noncomplete	245	1,027,484	11	19,034,925
Total	1,302	22,910,813	25	23,475,819
Materials, supplies, and equipment for construction:				
Intracompany or interdepartmental	1,021	3,822,348	216	1,047,336
Government schedule	989	1,013,973		
Advertised	6,686	10,202,688		
Negotiated, complete	24,293	52,338,463	211	2,183,149
Negotiated, non-complete	12,947	15,016,235	71	383,926
Total	45,936	82,393,707	498	3,614,411
Materials, supplies, and equipment other than construction:				
Intracompany or interdepartmental	19,618	30,826,892	559	2,947,313
Government schedule	10,418	9,647,690	50	732,114
Advertised	697	4,689,185		
Negotiated, complete	183,475	200,888,121	762	3,779,251
Negotiated, noncomplete	160,714	94,740,853	1,483	18,683,600
Total	374,922	340,792,741	2,854	26,142,278
Services other than utility services:				
Intracompany or interdepartmental	317	2,390,167	25	422,151
Government schedule	179	289,240		
Advertised	32	464,304	1	900
Negotiated, complete	1,174	2,735,967	14	252,268
Negotiated, noncomplete	4,471	5,145,919	195	3,389,068
Total	6,173	11,025,597	235	4,064,387
Other negotiated, noncomplete:				
Architect-engineer	53	1,701,974	36	3,608,825
Research and development	447	2,869,028	423	36,563,823
Rents and utility services	1,257	14,491,748	97	587,886
Recapitulation:				
Intracompany or interdepartmental	21,031	38,515,085	803	4,907,741
Government schedule	11,586	10,950,903	50	732,114
Advertised	7,729	26,684,249	1	900
Negotiated, complete	209,670	266,509,895	1,001	10,655,562
Negotiated, noncomplete	180,074	133,525,476	2,313	81,760,112
Total	430,090	476,185,608	4,168	98,057,429

[1] Number of actions includes original contracts, modifications, amendments, and supplemental agreements.

Summary of contract actions on basis of method of procurement and type of contract, fiscal year 1958

	Prime—Fixed price		Prime—Cost type	
	Number of actions [1]	Dollar value	Number of actions [1]	Dollar value
Construction:				
Interdepartmental	1	$16,000		
Advertised	766	63,322,271	1	$991
Negotiated, complete	22	5,406,848	1	40,000
Negotiated, noncomplete	120	877,479	25	14,695,852
Total	909	69,622,598	27	14,736,843
Materials, supplies, and equipment for construction:				
Intracompany or interdepartmental	18	75,712		
Government schedule	4	4,740		
Advertised	47	423,499	1	6,279
Negotiated, complete	4	1,133		
Negotiated, noncomplete	22	3,387,368	2	700,000
Total	95	3,892,452	3	706,279
Materials, supplies, and equipment other than construction:				
Intracompany or interdepartmental	3,044	10,385,639	11	772,060
Government schedule	1,433	1,126,904		
Advertised	997	6,737,813		
Negotiated, complete	2,958	73,261,884	5	7,716.446
Negotiated, noncomplete	2,341	287,836,413	10	3,838,344
Total	10,773	379,348,653	26	12,326,850
Services other than utility services:				
Intracompany or interdepartmental	343	3,267,279	158	34,822,303
Government schedule	185	206,457		
Advertised	61	268,025	2	10,090
Negotiated, complete	166	3,074,020	22	51,371,136
Negotiated, noncomplete	672	14,275,723	137	779,275,034
Total	1,427	21,091,504	319	865,478,563
Other negotiated, noncomplete:				
Architect-engineer	184	3,351,522	96	11,772.443
Research and development	874	17,802,070	440	501,201,340
Rents and utility services	522	218,930,051		
Recapitulation:				
Intracompany or interdepartmental	3,501	127,673,142	229	42,675,467
Government schedule	1,622	1,338,101		
Advertised	1,871	70,751,608	4	17,360
Negotiated, complete	3,150	81,743,885	28	59,127,582
Negotiated, noncomplete	4,640	432,532,114	650	1,304,401,909
Total	14,784	714,038,850	911	1.406,222,318

[1] Number of actions include original contracts, modifications, amendments, and supplemental agreements.

Summary of subcontract actions on basis of method of procurement and type of contract, fiscal year 1958

	Sub—Fixed price		Sub—Cost price	
	Number of actions [1]	Dollar value	Number of actions [1]	Dollar value
Construction:				
Interdepartmental	2	$67		
Advertised	337	9,712,233		
Negotiated, complete	763	9,635,678	34	$1,916,228
Negotiated, noncomplete	298	1,014,815	17	9,580,066
Total	1,400	20,362,793	51	11,496,294
Materials, supplies, and equipment for construction:				
Intracompany or interdepartmental	846	2,448,667	153	393,717
Government schedule	743	838,051	1	150,000
Advertised	1,776	3,206,349		
Negotiated, complete	20,234	41,611,031	5	1,085,137
Negotiated, noncomplete	10,357	7,084,305	48	7,568,337
Total	33,956	55,188,403	207	9,197,191
Materials, supplies, and equipment other than construction:				
Intracompany or interdepartmental	30,106	8,058,393	184	1,057,003
Government schedule	11,533	12,258,505	1	8,600
Advertised	946	10,859,294		
Negotiated, complete	167,023	217,733,565	105	6,795,661
Negotiated, noncomplete	174,868	115,621,749	339	20,617,004
Total	384,476	364,531,506	629	28,478,268
Services other than utility services:				
Intracompany or interdepartmental	190	1,049,702	55	1,099,188
Government schedule	181	853,453	3	320
Advertised	28	790,523		
Negotiated, complete	1,403	2,404,211	38	1,182,519
Negotiated, noncomplete	3,914	6,120,284	144	3,756,110
Total	5,716	11,218,173	240	6,038,137
Other negotiated, noncomplete:				
Architect-engineer	11	63,573	19	2,510,996
Research and development	329	1,222,235	303	22,727,415
Rents and utility services	745	16,788,113	4	145,305
Recapitulation:				
Intracompany or interdepartmental	31,155	11,678,557	392	2,549,908
Government schedule	12,457	13,950,009	5	158,920
Advertised	3,087	24,568,399		
Negotiated, complete	189,423	271,384,485	182	10,979,545
Negotiated, noncompleted	190,511	147,793,346	874	66,905,233
Total	426,633	469,374,796	1,453	80,593,606

[1] Number of actions includes original contracts, modifications, amendments, and supplemental agreements.

Summary of contract actions on basis of method of procurement and type of contract, fiscal year 1959

	Prime—Fixed price		Prime—Cost type	
	Number of actions [1]	Dollar value	Number of actions [1]	Dollar value
Construction:				
Interdepartmental	15	$152,517	1	$9,817
Advertised	1,113	66,949,680	1	150,000
Negotiated, complete	9	155,258	7	3,725,000
Negotiated, noncomplete	62	699,278	56	59,764,746
Total	1,199	67,956,733	65	63,649,563
Materials, supplies, and equipment for construction:				
Intracompany or interdepartmental	13	73,400	1	9,540
Government schedule	5	10,563		
Advertised	26	1,410,454		
Negotiated, complete	24	3,002,472	1	500,000
Negotiated, noncomplete	22	5,372,611	5	5,634,467
Total	90	9,869,500	7	6,144,007
Materials, supplies, and equipment other than construction:				
Intracompany or interdepartmental	1,422	75,960,261	6	337,141
Government schedule	1,318	1,054,423		
Advertised	649	7,283,358		
Negotiated, complete	2,711	11,028,686	2	119,841
Negotiated, noncomplete	3,673	366,564,708	22	9,222,373
Total	9,773	461,891,436	30	9,679,355
Services other than utility services:				
Intracompany or interdepartmental	230	3,141,866	123	13,469,606
Government schedule	228	378,369		
Advertised	123	974,914	2	75,997
Negotiated, complete	91	92,799	11	60,741,075
Negotiated, noncomplete	650	4,104,487	123	783,897,727
Total	1,322	8,692,435	259	858,184,405
Other negotiated noncomplete:				
Architect-engineer	232	3,269,263	85	18,231,168
Research and development	962	21,800,595	544	617,415,690
Rents and utility services	240	216,810,971	3	89,453
Recapitulation:				
Intracompany or interdepartmental	1,714	191,479,875	210	24,384,095
Government schedule	1,551	1,443,355		
Advertised	1,911	76,618,406	3	225,997
Negotiated, complete	2,835	14,279,215	21	65,085,916
Negotiated, noncomplete	5,807	506,470,082	759	1,483,697,633
Total	13,818	790,290,933	993	1,573,393,641

[1] Number of actions include original contracts, modifications, amendments, and supplemental agreements.

Summary of subcontract actions on basis of method of procurement and type of contract, fiscal year 1959

	Sub—Fixed price		Sub—Cost type	
	Number of actions [1]	Dollar value	Number of actions [1]	Dollar value
Construction:				
Interdepartmental				
Advertised	450	$7,799,057		
Negotiated, complete	810	8,882,898	4	$1,252,860
Negotiated, noncomplete	285	705,410	21	855,969
Total	1,545	17,387,815	25	2,108,829
Materials, supplies, and equipment for construction:				
Intracompany or interdepartmental	591	878,723	53	133,990
Government schedule	636	1,278,554	11	3,594
Advertised	1,131	3,838,719		
Negotiated, complete	15,041	20,955,581		
Negotiated, noncomplete	10,976	7,585,228	6	60,131
Total	28,375	34,536,805	70	197,715
Materials, supplies, and equipment other than construction:				
Intracompany or interdepartmental	9,434	8,638,885	188	3,054,435
Government schedule	12,692	15,606,832	5	20,225
Advertised	1,528	19,910,912		
Negotiated, complete	179,926	200,626,873	100	5,823,824
Negotiated, noncomplete	215,318	127,874,205	470	25,807,640
Total	418,898	372,657,707	763	34,706,124
Services, other than utility services:				
Intracompany or interdepartmental	188	1,301,433	94	1,237,645
Government schedule	250	1,309,267	5	983
Advertised	26	463,691		
Negotiated, complete	1,606	5,563,898	31	874,798
Negotiated, noncomplete	4,704	9,559,423	254	8,422,467
Total	6,774	18,197,712	384	10,535,893
Other negotiated, noncomplete:				
Architect-engineer	24	595,912	13	842,246
Research and development	342	1,271,069	299	18,670,049
Rents and utility services	590	18,575,954		
Recapitulation:				
Intracompany or interdepartmental	10,215	10,959,041	335	4,426,070
Government schedule	13,578	18,194,653	21	24,802
Advertised	3,135	32,012,829		
Negotiated, complete	197,383	236,029,250	135	7,951,482
Negotiated, noncomplete	232,237	166,027,201	1,063	54,658,502
Total	456,548	463,222,974	1,554	67,060,856

[1] Number of actions include original contracts, modifications, amendments, and supplemental agreements.

Summary of contract actions on basis of method of procurement and type of contract, fiscal year 1960

	Prime—Fixed price		Prime—Cost type	
	Number of actions [1]	Dollar value	Number of actions [1]	Dollar value
Construction:				
Interdepartmental	8	$52,368		
Advertised	1,122	66,370,054	1	$86,000
Negotiated, complete	16	1,698,548	8	2,362,871
Negotiated, noncomplete	156	7,645,236	83	121,170,039
Total	1,302	75,766,206	92	123,618,910
Materials, supplies, and equipment for construction:				
Intracompany or interdepartmental	18	332,287	2	73,300
Government schedule	11	4,426		
Advertised	26	2,032,530		
Negotiated, complete	53	487,171	1	9,500
Negotiated, noncomplete	60	352,728	1	2,635,000
Total	168	3,209,142	4	2,717,800
Materials, supplies, and equipment other than construction:				
Intracompany or interdepartmental	1,695	128,927,892	11	2,005
Government schedule	1,286	1,365,418		
Advertised	380	6,070,368		
Negotiated, complete	2,931	43,320,598		
Negotiated, noncomplete	3,861	868,140,019	8	3,737,496
Total	10,153	1,047,824,295	19	3,739,501
Services other than utility services:				
Intracompany or interdepartmental	288	3,628,293	62	55,938,517
Government schedule	186	188,043		
Advertised	114	984,441	1	23,598
Negotiated, complete	110	212,709	8	35,389,818
Negotiated, noncomplete	637	3,207,504	106	873,396,580
Total	1,335	8,220,990	177	964,748,513
Other negotiated, noncomplete:				
Architect-engineer	284	3,545,100	104	17,467,848
Research and development	990	25,074,653	639	555,859,307
Rents and utility services	299	219,810,259	14	1,716,723
Recapitulation:				
Intracompany or interdepartmental	2,069	248,341,232	148	65,940,677
Government schedule	1,483	1,557,887		
Advertised	1,642	75,457,393	2	109,598
Negotiated, complete	3,110	45,719,026	17	37,762,189
Negotiated, noncomplete	6,227	1,012,375,107	882	1,566,056,138
Total	14,531	1,383,450,645	1,049	1,669,868,602

[1] Number of actions includes original contracts, modifications, amendments, and supplemental agreements.

Summary of subcontract actions on basis of method of procurement and type of contract, fiscal year 1960

	Sub—Fixed price		Sub—Cost price	
	Number of actions [1]	Dollar value	Number of actions [1]	Dollar value
Construction:				
Interdepartmental	21	$1,599		
Advertised	502	26,326,139		
Negotiated, complete	3,225	8,424,553	10	$2,088,563
Negotiated, noncomplete	499	782,370	14	1,386,441
Total	4,347	35,534,661	24	3,475,004
Materials, supplies, and equipment for construction:				
Intracompany or interdepartmental	427	1,039,611	39	26,795
Government schedule	399	1,029,149		
Advertised	823	9,219,765		
Negotiated, complete	13,377	40,055,535	7	2,311,770
Negotiated, noncomplete	9,542	6,502,460	28	5,981,150
Total	24,568	57,846,520	74	8,319,715
Materials, supplies, and equipment other than construction:				
Intracompany or interdepartmental	8,165	7,689,543	175	1,190,605
Government schedule	13,923	18,156,136	5	7,182
Advertised	1,524	17,364,482		
Negotiated, complete	187,580	218,990,306	90	5,470,834
Negotiated, noncomplete	238,811	147,177,629	541	21,666,356
Total	450,003	409,378,096	811	28,334,977
Services other than utility services:				
Intracompany or interdepartmental	310	1,597,368	152	1,767,417
Government schedule	196	401,819	5	546
Advertised	36	1,211,675		
Negotiated, complete	1,621	7,467,882	69	3,198,462
Negotiated, noncomplete	6,060	12,823,227	299	8,531,334
Total	8,223	23,501,971	525	13,497,759
Other negotiated, noncomplete:				
Architect-engineer	65	1,044,221	31	5,167,773
Research and development	151	1,386,533	286	18,694,023
Rents and utility services	506	17,739,192	6	282,012
Recapitulation:				
Intracompany or interdepartmental	8,925	10,341,416	366	2,984,817
Government schedule	14,518	19,587,104	10	7,728
Advertised	2,885	54,122,061		
Negotiated, complete	205,903	274,938,276	176	13,069,629
Negotiated, noncomplete	255,632	187,442,337	1,205	61,709,089
Total	487,863	546,431,194	1,757	77,771,263

[1] Number of actions includes original contracts, modifications, amendments, and supplemental agreements.

APPENDIX F

Information Relating to National Aeronautics and Space Administration Contracts

National Aeronautics and Space Administration,
Office of the Administrator,
Washington, D.C., February 24, 1961.

Mr. Colin F. Stam,
Chief of Staff, Joint Committee on Internal Revenue Taxation, House Office Building, Washington, D.C.

Dear Mr. Stam: This responds to your letter of February 10, 1961, requesting certain information on NASA procurement and to the understandings reached at a conference between members of your staff and representatives of this agency on February 17, 1961. The paragraph references below relate to those of your February 10 letter.

1. Reference paragraph 2

(*a*) *Method of placement.*—These data are provided in attachment 1. The data for fiscal year 1959 are estimated in part; it is believed that the estimates do not vary from the actual data by more than 10 percent.

(*b*) *Compensation arrangement.*—These data are provided in attachment 2. The data for fiscal year 1959 and 1960 are estimated in part; it is believed that the estimates do not vary from the actual data by more than 10 percent.

(*c*) *Types of products and services.*—In accordance with its mission, virtually all of NASA's procurement is for research and development, or for property or services in support of research and development, with respect to aeronautical and space activities. In the first 6 months of fiscal year 1961, 83 percent of NASA's total procurement was funded from its "Research and development" appropriation, 15 percent from a "Construction and equipment" appropriation, and 2 percent from its "Salaries and expenses" appropriation.

(*d*) *Data on subcontracts.*—As explained to members of your staff, these data are not available.

2. Reference paragraph 3

(*a*) *Products or services procured in given year which are substantially different from these procured in previous years.*—The types of products and services procured by NASA have not changed since its inception October 1, 1958.

(*b*) *Absence of prior production experience and cost data.*—Since most of NASA's procurement is for research and development, there is relatively little experience data available. It is for this reason that most of NASA's procurement dollars are placed under cost-plus-fixed-fee contracts.

3. Reference paragraph 4

(*a*) *Profit experience of contractors.*—Most of the major contracts placed by NASA since its establishment, are still active. Consequently, profit experience data are not yet available.

(*b*) *Fees paid on cost-plus-fixed-fee contracts.*—Present procurement law (10 U.S.C. 2306(d)), governing NASA, limits the fee for performing a cost-plus-fixed-fee contract for experimental, developmental, or research work to not more than 15 percent of the estimated cost of the contract, not including the fee. For architectural or engineering services for a public work or utility, the fee is limited to not more than 6 percent of the estimated cost of that work or project, not including the fee. The fee for performing any other cost-plus-fixed-fee contract may not be more than 10 percent of the estimated cost of the contract, not including the fee. Experience has revealed that, for the most part, cost-plus-fixed-fee contracts can be negotiated with fixed fees below the maximum established by law. The National Aeronautics and Space Administration, therefore, requires approval by the Administrator for any fixed fee of any cost type contract for experimental, developmental, or research work in excess of 10 percent of the estimated costs, exclusive of fee, and for any other type of cost-plus-fixed-fee contract, other than for architectural or engineering services, in excess of 7 percent.

Attachment 3 provides actual data on fees paid by NASA on cost-plus-fixed-fee contracts. As indicated, these data cover all active NASA contracts on which actions of $25,000 or more were accomplished during the first 6 months of fiscal year 1961.

(*c*) *Overruns and underruns of estimated costs.*—As stated above, most of the major contracts placed by NASA are still active. Therefore, data on overruns and underruns are not yet available.

Please advise us if we can be of further assistance in this matter.

Sincerely yours,

JAMES P. GLEASON,
Assistant Administrator for Congressional Relations.

ATTACHMENT 1

NASA prime contract procurement actions—Method of placement—Direct awards to business under formally advertised and negotiated contracts,[1] Jan. 1, 1959–Dec. 31, 1960

OBLIGATIONS

	Fiscal year 1959, Jan. 1–June 30		Fiscal year 1960		Fiscal year 1961, July 1–Dec. 31	
	Amount	Percent of total	Amount	Percent of total	Amount	Percent of total
	Millions		*Millions*		*Millions*	
Formally advertised	$16.9	26	$27.6	18	$21.3	14
Negotiated	49.2	74	128.7	82	133.7	86
Total	66.1	100	156.3	100	155.0	100

NUMBER OF CONTRACTS

	Fiscal year 1959, Jan. 1–June 30		Fiscal year 1960		Fiscal year 1961, July 1–Dec. 31	
	Number	Percent of total	Number	Percent of total	Number	Percent of total
Formally advertised	429	66	1,203	63	2,137	61
Negotiated	225	34	701	37	1,377	39
Total	654	100	1,904	100	3,514	100

[1] Includes all direct awards to business except actions placed under General Services Administration contracts, and purchases and contracts of $2,500 or less. Excludes intragovernmental procurement.

ATTACHMENT 2

NASA prime contract procurement actions—Compensation arrangement direct awards to business according to pricing provision,[1] Jan. 1, 1959–Dec. 31, 1960

OBLIGATIONS

	Fiscal year 1959, Jan. 1–June 30		Fiscal year 1960		Fiscal year 1961, July 1–Dec. 31	
	Amount	Percent of total	Amount	Percent of total	Amount	Percent of total
	Millions		*Millions*		*Millions*	
Fixed price:						
Firm	$24.0	36	$37.3	24	$31.8	21
Redeterminable	(2)	(2)	(2)	(2)	.8	(3)
Incentive	(2)	(2)	(2)	(2)	.1	(3)
Total fixed price	24.0	36	37.3	24	32.7	21
Cost reimbursement:						
Cost (no fee)	2.4	4	.2	(3)	.1	(3)
Cost plus fixed fee	39.7	60	118.8	76	120.0	78
Time and materials	(2)	(2)	(2)	(2)	2.2	1
Total, cost reimbursement	42.1	64	119.0	76	122.3	79
Total	66.1	100	156.3	100	155.0	100

See footnotes at end of table, p. 136.

NASA prime contract procurement actions—Compensation arrangement direct awards to business according to pricing provision,[1] Jan. 1, 1959–Dec. 31, 1960—Continued

NUMBER OF CONTRACTS

	Fiscal year 1959, Jan. 1–June 30		Fiscal year 1960		Fiscal year 1961, July 1–Dec. 31	
	Number	Percent of total	Number	Percent of total	Number	Percent of total
Fixed price:						
Firm	609	93	1,769	93	3,321	95
Redeterminable	(2)	(2)	(2)	(2)	8	(3)
Incentive	(2)	(2)	(2)	(2)	1	(3)
Total, fixed price	609	93	1,769	93	3,330	95
Cost reimbursement:						
Cost (no fee)	12	2	39	2	3	(3)
Cost plus fixed fee	33	5	96	5	166	5
Time and materials	(2)	(2)	(2)	(2)	15	(3)
Total, cost reimbursement	45	7	135	7	184	5
Total	654	100	1,904	100	3,514	100

[1] Includes all direct awards to business except actions placed under General Services Administration contracts, and purchases and contracts of $2,500 or less. Excludes intragovernmental procurement.
[2] Data not available but magnitude of no significance.
[3] Less than ½ of 1 percent.

Attachment 3

NASA prime contract procurement actions—Fees paid on cost-plus-fixed-fee contracts (contracts on which actions of $25,000 and over were accomplished July 1, 1960–Dec. 31, 1960)

Percentage fee	Contracts			Fees	Estimated contract cost			Average percentage fee
	Number	Percent of total	Cumulative percent		Amount	Percent of total	Cumulative percent	
2–2.99	1	1	1	$1,052,050	$47,015,375	11	11	2.23
3–3.99	2	2	3	2,360,749	73,957,750	17	28	3.19
4–4.99	6	5	8	278,635	5,851,646	1	29	4.76
5–5.99	13	12	20	501,137	9,268,343	2	31	5.40
6–6.99	47	41	61	18,483,544	283,412,589	63	94	6.52
7–7.99	32	29	90	1,207,424	16,431,743	4	98	7.34
8–8.99	9	8	98	671,583	8,130,320	2	100	8.26
9–9.99	2	2	100	16,975	179,755	(1)		9.44
Total	112	100		24,572,097	444,247,521	100		5.53

[1] Less than ½ of 1 percent.

APPENDIX G

Information Relating to General Services Administration Contracts

General Services Administration,
Washington, D.C., March 29, 1961.

Mr. Colin F. Stam,
Chief of Staff,
Joint Committee on Internal Revenue Taxation,
Congress of the United States, Washington, D.C.

Dear Mr. Stam: Reference is made to your letter of February 10, 1961, in which you requested certain data with respect to contracts placed by General Services Administration which were subject to the Renegotiation Act of 1951. Attached is a tabulation sheet covering the fiscal years of 1956 to 1960, inclusive, embodying the information which the records of this agency disclose. All contracts mentioned in the tabulation sheet are renegotiable contracts.

Your attention is invited to the fiscal years of 1956 and 1957. The data available for 1956 are fragmentary. In order for this information to be completed a considerable research into contract records would be required, entailing a rather long period of time for completion. The data available for 1957 are comparatively accurate, except for a few contracts made in our regional offices, the records of which are incomplete. However, the number of contracts and dollar awards made in these offices account for only a minor proportion of the total. The data for the fiscal years of 1958, 1959, and 1960 are reasonably complete. Amounts relating to contracts for less than $10,000 are not included because such information is not available. (Under the policy of the Renegotiation Board, only contracts in excess of $10,000 are required to be reported monthly.) Similarly, since no records have been maintained with respect to renegotiable subcontracts, no information is being furnished with respect thereto.

The seven beneficiation contracts described in the attached tabulation sheet were substantially different from those involved in prior contracting but the knowledge of the end-product value and the value of the material to be upgraded narrowed the pricing area to a reasonably accurate limitation. In addition, 8 of the 11 fiscal year 1959 strategic material contracts, totaling $439,000, covered diamond dies and were different from previous purchases. However, GSA had competition plus knowledge of prices paid by commercial users. Because of these factors we believe that substantially accurate initial pricing was obtained in spite of the absence of prior production experience and cost data. Other contracts than those mentioned here were for items like those bought in the past, and in the case of negotiated schedule contracts, full confidential data are obtained from each supplier as to the pricing.

The reason for having recommended in our letter of January 19, 1961, that the Renegotiation Act be continued in its present form, is that we believe it to be in the Government's best interest for many contracts to be subject to renegotiation to assure that excessive overcharges are not made. However, it should be pointed out that the act's impact on GSA's buying for its own account is comparatively slight.

We believe our knowledge of past procurement and careful checks of bidders' confidential data afford adequate safeguards against overpricing, but the existence of the Renegotiation Act operates as a deterrent against sharp practices on a contractor's part, and also will permit relief in the cases where our analysis of the price situation proves to be inadequate.

This agency, with one exception, has had no occasion to delve into the question of profits earned by the various Government contractors described in the attached tabulation sheet. In that instance, investigation made by the General Accounting Office disclosed that overall net profit was not excessive, amounting to 4.8 percent of the total purchases made, almost all of which represented renegotiable sales. With respect to cost-plus-fixed-fee contracts and other contracts in which estimated costs are employed in pricing, which are rarely used by GSA, the overall limitation specified in each such contract cannot be exceeded unless authorized in writing by the contracting officer and provided money therefor can be allocated. Costs are kept in line through periodic audits of contractors' records.

In the event additional information is desired, please advise and we will be glad to comply with your request.

Sincerely yours,

JOHN L. MOORE, *Administrator.*

Enclosure.

General Services Administration

Contracts subject to Renegotiation Act of 1951

	Fiscal year 1960				Fiscal year 1959				Fiscal year 1958			
	Number of contracts	Percent of number	Dollar value	Percent of dollars	Number of contracts	Percent of number	Dollar value	Percent of dollars	Number of contracts	Percent of number	Dollar value	Percent of dollars
Method of placement:												
Formally advertised	411	74	26,076,484	85	458	74	30,571,348	74	508	82	29,132,089	83
Negotiated	141	26	4,493,816	15	161	26	10,645,931	26	109	18	5,808,024	17
Total	552	100	30,570,300	100	619	100	41,217,279	100	617	100	34,940,113	100
Compensation arrangement:												
Firm fixed price	552	100	30,570,300	100	618	100	41,146,279	100	612	99	33,633,113	96
Cost plus fixed fee					1		71,000		5	1	1,307,000	4
Total	552	100	30,570,300	100	619	100	41,217,279	100	617	100	34,940,113	100
Types of products and services:												
Office supplies and paper products	172	31	6,296,780	21	171	28	7,140,188	17	132	21	5,299,720	15
Office and photographic equipment	14	3	994,654	3	19	3	1,088,147	3	5	1	688,159	2
Office furniture	29	5	2,871,740	9	14	2	1,211,203	4	12	2	763,333	2
Household furnishings	77	14	2,356,365	7	122	20	5,464,503	13	222	36	7,760,973	22
Motor and construction equipment	28	5	11,888,242	39	58	9	12,142,886	30	46	7	12,650,968	36
Machine and hand tools	2		18,364						21	4	650,393	2
Hardware, electrical and building materials	97	18	3,126,523	10	67	11	3,628,311	9	32	5	1,701,057	5
Chemicals, drugs, and medical equipment	12	2	452,044	2	9	1	734,286	2	9	1	281,046	1
Fuels and general products	20	4	448,588	2	7	1	504,755	1	8	1	271,464	1
Strategic and critical materials:												
Materials					11	2	2,223,000	5	6	1	1,540,000	4
Supplies (pallets and tarps)	11	2	90,000		42	7	440,000	1	26	4	584,000	2
Beneficiation	1		621,000	2	5	1	4,516,000	11				
Services (inspection and handling)	80	15	1,203,000	4	71	11	1,767,000	4	90	15	1,148,000	3
Construction and repair	9	1	203,000	1	22	4	286,000		3	1	294,000	1
Research and development					1		71,000		5	1	1,307,000	4
Total	552	100	30,570,300	100	619	100	41,217,279	100	617	100	34,940,113	100

Contracts subject to Renegotiation Act of 1951—Continued

	Fiscal year 1957				Fiscal year 1956			
	Number of contracts	Percent of number	Dollar value	Percent of dollars	Number of contracts	Percent of number	Dollar value	Percent of dollars
Method of placement:								
Formally advertised	198	65	12,894,794	58	16	31	291,000	5
Negotiated	107	35	9,338,114	42	36	69	5,911,000	95
Total	305	100	22,232,908	100	52	100	6,202,000	100
Compensation arrangement:								
Firm fixed price	303	99	21,989,908	99	52	100	6,202,000	100
Cost plus fixed fee	2	1	243,000	1				
Total	305	100	22,232,908	100	52	100	6,202,000	100
Types of products and services:								
Office supplies and paper products	130	43	9,001,985	40				
Office and photographic equipment	4	1	150,850	1				
Office furniture	19	6	444,327	2				
Household furnishings	11	4	342,972	2				
Motor and construction equipment	19	6	2,013,002	9				
Machine and hand tools								
Hardware, electrical, and building materials	8	3	231,133	1				
Chemicals, drugs, and medical equipment								
Fuels, and general products	3	1	562,639	3				
Strategic and critical materials:								
Materials	7	2	4,943,000	22	10	19	5,378,000	87
Supplies (pallets and tarps)	9	3	98,000					
Beneficiation	1		2,256,000	10				
Services (inspection and handling)	88	29	1,321,000	6	42	81	824,000	13
Construction and repair	4	1	625,000	3				
Research and development	2	1	243,000	1				
Total	305	100	22,232,908	100	52	100	6,202,000	100

APPENDIX H

Vinson-Trammell and Merchant Marine Act Profit Limitation Provisions

There are set forth below excerpts containing the pertinent profit limitation provisions of the Vinson-Trammell Act which are now suspended by section 102(e) of the Renegotiation Act of 1951.

"§ 2382. Aircraft: contract requirements.

"(a) The Secretary of a military department may not contract for the manufacture of all or part of any complete aircraft, unless the contractor agrees—

"(1) to report under oath to the Secretary, when the contract is completed, as prescribed in subsection (b);

"(2) to pay any excess profit into the Treasury;

"(3) to make no division of any contract or subcontract for the same article for the purpose of evading this section;

"(4) that the books and manufacturing spaces of its plant, affiliates, and divisions may at any time be audited and inspected, respectively, by any person designated by the Secretary of the military department concerned, the Secretary of the Treasury, or an authorized committee of Congress; and

"(5) to make no subcontract unless the subcontractor agrees to the conditions set forth in this subsection.

"(b) The report required under subsection (a)(1) shall be in the form prescribed by the Secretary of the military department concerned. It shall state the total contract price, the cost of performing the contract, the net profit or loss, and the percentage of the contract price that is net profit or loss. A copy shall be sent to the Secretary of the Treasury to be considered with the Federal income tax returns of the contractor.

"(c) For the purposes of this section, "excess profit" means so much of the profits as the Secretary of the Treasury determines to be greater than 12 percent of the total contract price for contracts covered by this section and completed by a contractor or subcontractor within the taxable year. The method of computing excess profits shall be determined by the Secretary of the Treasury in agreement with the Secretary of the military department concerned. It shall be made available to the public.

"(d) When an excess profit is found owing, the Secretary of the Treasury shall allow credit for any Federal income taxes paid or to be paid on the excess profit. If a contractor or subcontractor has a net loss, or a net profit of less than 12 percent, on the aggregate of contracts or subcontracts covered by this section and completed in a taxable year, the deficiency shall be allowed as a credit against any excess profit for the next succeeding four taxable years.

"(e) When paid into the Treasury, an excess profit becomes the property of the United States. The surety under the contract is not liable for its payment.

"(f) This section applies to any division of a contract or subcontract covered by this section.

"(g) This section does not apply to—

"(1) a contract or subcontract for scientific equipment for communications, target detection, navigation, or fire control if the Secretary of the military department concerned designates the contract or subcontract for exemption; or

"(2) a contract or subcontract, or division thereof, if the amount involved is $10,000 or less.
(Aug. 10, 1956, ch. 1041, 70A Stat. 136.)

* * * * * * *

"§ 7300. Contracts for construction: profit limitation

"(a) The Secretary of the Navy may not contract for the construction or manufacture of all or part of any complete naval vessel, unless the contractor agrees—

"(1) to report under oath to the Secretary, when the contract is completed, as prescribed in subsection (b);

"(2) to pay any excess profit into the Treasury;

"(3) to make no division of any contract or subcontract for the same article for the purpose of evading this section;

"(4) that the books and manufacturing spaces of its plant, affiliates, and divisions may at any time be audited and inspected, respectively, by any person designated by the Secretary of the Navy, the Secretary of the Treasury, or an authorized committee of Congress; and

"(5) to make no subcontract unless the subcontractor agrees to the conditions set forth in this subsection.

"(b) The report required under subsection (a)(1) shall be in the form prescribed by the Secretary of the Navy. It shall state the total contract price, the cost of performing the contract, the net profit or loss, and the percentage of the contract price that is net profit or loss. A copy shall be sent to the Secretary of the Treasury to be considered with the Federal income tax returns of the contractor.

"(c) For the purposes of this section, "excess profit" means so much of the profits as the Secretary of the Treasury determines to be greater than 10 percent of the total contract price for contracts covered by this section and completed by a contractor or a subcontractor within the taxable year. The method of computing excess profits shall be determined by the Secretary of the Treasury in agreement with the Secretary of the Navy. It shall be made available to the public.

"(d) When an excess profit is found owing, the Secretary of the Treasury shall allow credit for any Federal income taxes paid or to be paid on the excess profit. If a contractor or subcontractor has a net loss on the aggregate of contracts or subcontracts covered by this section and completed in a taxable year, the deficiency shall be allowed as a credit against any excess profit for the next taxable year.

"(e) When paid into the Treasury, an excess profit becomes the property of the United States. The surety under the contract is not liable for its payment.

"(f) This section applies to any division of a contract or subcontract covered by this section.

"(g) This section does not apply to—

"(1) a contract or subcontract for scientific equipment for communications, target detection, navigation, or fire control if the Secretary of the Navy designates the contract or subcontract for exemption; or

"(2) a contract or subcontract, or division thereof, if the amount involved is $10,000 or less. Aug. 10, 1956, c. 1041, 70A Stat. 450."

The following excerpt is the profit limitation provision of the Merchant Marine Act which is now suspended by section 102(e) of the Renegotiation Act of 1951.

§ 1155. Eligible shipyards; materials; conditions of contracts—Limitation to American shipyards; American materials; ability of bidders; filing bids and data

* * * * * * *

Conditions of contracts; reports as to costs and net profits; limitation on profit; payment to Secretary of excess profit; subdivision of contracts; inspection of records and premises; contracts for scientific equipment

(b) No contract shall be made for the construction of any vessel under this chapter unless the shipbuilder shall agree (1) to make a report under oath to the Secretary of Commerce upon completion of the contract, setting forth in the form prescribed by the Secretary the total contract price, the total cost of performing the contract, the amount of the shipbuilder's over-

head charged to such cost, the net profits and the percentage such net profit bears to the contract price, and such other information as the Secretary shall prescribe; (2) to pay to the Secretary profit, as hereinafter provided shall be determined by the Secretary, in excess of 10 per centum of the total contract prices of such contracts within the scope of this section as are completed by the particular contracting party within the income taxable year, such amount to become the property of the United States, but the surety under such contracts shall not be liable for the payment of such excess profit: *Provided*, That if there is a net loss on all such contracts or subcontracts completed by the particular contractor or subcontractor within any income taxable year, such net loss shall be allowed as a credit in determining the excess profit, if any, for the next succeeding income taxable year: *Provided*, That, if such amount is not voluntarily paid, the Secretary shall determine the amount of such excess profit and collect it in the same manner that other debts due the United States may be collected; (3) to make no subdivisions of any contract or subcontract for the same article or articles for the purpose of evading the provisions of this chapter, and any subdivision of any contract or subcontract involving an amount in excess of $10,000 shall be subject to the conditions herein prescribed; (4) that the books, files, and all other records of the shipbuilder, or any holding, subsidiary, affiliated, or associated company, shall at all times be subject to inspection and audit by any person designated by the Secretary, and the premises, including ships under construction, of the shipbuilder, shall at all reasonable times be subject to inspection by the agents of the Secretary; and (5) to make no subcontract unless the subcontractor agrees to the foregoing conditions: *Provided*, That this section shall not apply to contracts or subcontracts for scientific equipment used for communication and navigation as may be so designated by the Secretary, nor to contracts or other arrangements entered into under this subchapter by the terms of which the United States undertakes to pay only for national-defense features, and the Secretary shall report annually to Congress the names of such contractors and subcontractors affected by this provision, together with the applicable contracts and the amounts thereof.

APPENDIX I

Certain Nonstatutory Profit Limitation Provisions

The following are excerpts from certain nonstatutory profit limitation provisions which are discussed in section 7–B.

1. Excerpt From Article III of the Special Provisions of the Pro Forma Contract for the Construction of Ships, Federal Maritime Board, May 31, 1960

"Article III. * * *

"5. *Limitation on Total Payments under this Article III and Article 18 of the General Provisions:*

"(a) Notwithstanding any other provisions of this Contract, if the total of the amounts to be paid to the Contractor under this Article III and under paragraph (b) of Article 18 of the General Provisions when added to the total payments to be made to the Contractor under this Contract (excluding the payments under this Article III and under paragraph (b) of Article 18 of the General Provisions) would result in the payment to the Contractor of profit in excess of ten per cent (10%) of the Contract Price under this Contract, as said Contract Price is adjusted pursuant to the provisions of this Contract, to the extent that such profit in excess of ten per cent (10%) would be due to payments to the Contractor pursuant to this Article III and paragraph (b) of Article 18 of the General Provisions, the payments to be made to the Contractor pursuant to this Article III and paragraph (b) of Article 18 shall be reduced by the sum of such excess.

"(b) The profit of the Contract for the purposes of paragraph (a) above shall be determined in accordance with the 'Regulations Prescribing Method of Determining Profit, as revised by the Federal Maritime Board and Maritime Administration, U.S. Department of Commerce—July 21, 1952 and amendments thereto through August 12, 1954 and such further amendments thereto prior to the date of opening bids pursuant to which this Contract was amended', provided, however, in the determination of such profit only this Contract shall be considered."

2. Paragraph (e) of Article 6 of the Navy Contract for the Construction of Ships

"The Contracting Officer may deny, in whole or in part, any upward adjustment in the contract price required under this Article if the Contracting Officer finds that such adjustment is not required, in whole or in part, to enable the Contractor to earn a fair and reasonable profit under this contract."

66858—62——11

3. Article 37 of Proposed Revision of Master Lump-Sum Repair Contract for the Repair, Alteration, Conversion, Reconversion or Additions to Vessels—United States Department of Commerce, Maritime Administration—Division of Ship Repair and Maintenance July, 1960

"Article 37. *Recapture of Excess Profits.*

"(a) In the event any work is to be awarded subject to the provisions of this Article 37, the Invitation Notice and the job order shall so provide and the Contractor agrees, as to the job order covering such work:

"(i) To make a report at the end of the Contractor's income taxable year under oath to the Administration upon the completion of all work awarded subject to the provisions of this Article 37 of this or any other MARAD LUMPSUMREP Contract, setting forth in the form prescribed by the Administration the total contract price of such work, the total cost of performing such work, the amount of the Contractor's overhead charged to such cost, the net profit and the percentage such net profit bears to said Contract price and such other information as the Administration shall prescribe;

"(ii) To pay to the Administration profit, as shall be determined by the Administration, in excess of ten percent (10%) of the total Contract price covering work subject to the provisions of this Article 37 as above provided or work under subcontracts for work subject to provisions substantially the same as set out in this Article 37 under this or other lump sum ship repair contracts of the Administration, as is completed by the Contractor within the income taxable year, which such amount or amounts shall become the sole property of the United States; provided, however, if there is a net loss on all such contracts and subcontracts completed by the Contractor within any income taxable year, such net loss shall be allowed as a credit in determining the excess profit, if any, for the next succeeding income taxable year, provided further, that if such amount is not voluntarily paid, the Administration shall determine the amount of such excess profit and collect it in the same manner that other debts due the United States may be collected;

"(iii) That the books, files and all other records of the Contractor, or any holding, subsidiary, affiliated, or associated company, shall at all times be subject to nspection and audit by any person designated by the Administration, and the premises of the Contractor, shall at all times be subject to inspection by representatives of the Administration.

"(iv) That the amount of profit derived by the Contractor from the performance of the work covered hereby shall be determined by the Administration in accordance with the "Regulations Prescribing Method of Determining Profit, as Revised by the Federal Maritime Board and Maritime Administration, U.S. Department of Commerce—July 21, 1952" and amendments thereto.

"(v) To make no subdivision of any contract or subcontract for the same article or articles for the purpose of evading the provisions of this Article 37.

"(vi) To pay the Administration as damages, in event the Contractor fails to secure in a subcontract the agreements provided in paragraph (b) of this Article 37, the excess profit of the subcontractor in the event such excess profit is not paid to the Administration by the subcontractor, but in the event the Administration is unable to determine such excess profit by reason of the refusal of the subcontractor to permit an audit or in the event the omission from the subcontract of the agreement set out in subparagraph (v) of paragraph (b) of this Article 37 precludes subcontracts for the same article or articles as therein provided being deemed a single subcontract, to pay to the Administration, as liquidated damages and not as a penalty, a sum equal to fifteen per cent (15%) of such subcontract price, or a sum equal to fifteen per cent (15%) of the aggregate prices of such subcontracts for the same article or articles, as the case may be, and such damages or liquidated damages paid to the Administration pursuant to this subparagraph shall not be considered as an allowable item of cost for the purpose of determining profit pursuant to the provisions of this Article 37.

"(b) The Contractor further agrees that he will include in all of his subcontracts for work or material required for a job order subject to the provisions of this Article 37, the subcontractor's agreement:

"(i) To make, in the event that subcontract is for an amount in excess of Ten Thousand Dollars ($10,000.00), a report under oath to the Administration upon completion of the subcontract, setting forth in the form prescribed by the Administration the total subcontract price, the total cost of the subcontract, the amount of the subcontractor's overhead charged to such cost, the net profit and the percentage such net profit bears to the subcontract price, and such other information as the Administration shall prescribe.

"(ii) To pay, in the event the subcontract is for an amount in excess of Ten Thousand Dollars ($10,000.00), to the Administration profit, as determined by the Administration, in excess of ten per cent (10%) of the total of the contract prices of all contracts and subcontracts of the subcontractor subject to these provisions as are completed by the subcontractor within the income taxable year, which such amount or amounts shall become the sole property of the United States; provided, however, that if there is a net loss on all such contracts and subcontracts as completed by the subcontractor within any income taxable year such net loss shall be allowed as a credit in determining the excess profit, if any, for the next succeeding income taxable year; provided, further, that if such amount is not voluntarily paid the Administration shall determine the amount of such excess profit and collect it in the same manner that other debts due the United States may be collected.

"(iii) That in the event the subcontract is for an amount in excess of Ten Thousand Dollars ($10,000.00), the books, files, and all other records of the subcontractor, or any holding subsidiary, affiliated, or associated company, shall at all times be subject to inspection and audit by any person designated by the Administration, and the premises of the subcontractor shall at all times be subject to inspection by the representatives of the Administration.

"(iv) That the amount of profit derived by the subcontractor from the performance of the work covered thereby shall be determined by the Administration in accordance with its "Regulations Prescribing Method of Determining Profit as Revised by the Federal Maritime Board and Administration July 21, 1952," including amendments thereto.

"(v) That all of its subcontracts with the Contractor for the same article or articles, as defined in said Regulations, subject to the provisions of this Article 37, shall be deemed to be a single subcontract for the purposes of its agreement to pay excess profit.

"(vi) To make no subdivision of any of its subcontracts with its subcontractors for the same Article or Articles for the purpose of evading the provisions of this Article 37.

"(vii) To pay to the Administration as damages, in the event it fails to secure in a subcontract with its subcontractor, the agreements provided for in subparagraph (viii) of this paragraph (b) of this Article 37, the excess profit of such subcontractor in the event such excess profit is not paid to the Administration by the subcontractor, but in the event the Administration is unable to determine such excess profit by reason of the refusal of such subcontractor to permit an audit, or in the event the omission from such subcontract of the agreement set out in subparagraph (v) of this paragraph (b) precludes subcontracts with its subcontractor for the same Article or Articles being deemed a single subcontract, to pay to the Administration, as liquidated damages and not as a penalty, a sum equal to fifteen per cent (15%) of such subcontract price or a sum equal to fifteen per cent (15%) of the aggregate prices of such subcontracts for the same Article or Articles, as the case may be, and such damages or liquidated damages paid to the Administration pursuant to this subparagraph shall not be considered as an allowable item of cost for the purpose of determining profit pursuant to the provisions of this Article.

"(viii) To include in all of its subcontracts with its subcontractors for service or material required in the performance of the subcontract work, agreements in the same form as set out herein.

"(c) The provisions of this Article 37 shall not apply to subcontracts for such scientific equipment used for communication and navigation as may be so designated by the Administration.

"(d) The provisions of this Article 37 are included as a matter of Contract determination and their inclusion is not required by the Merchant Marine Act of 1936 as amended."

APPENDIX J

RENEGOTIATION ACT OF 1951 AS AMENDED TO DATE

[Public Law 9, 82d Cong., approved March 23, 1951, as amended by Public Law 764, 83d Cong., approved September 1, 1954, Public Law 216, 84th Cong., approved August 3, 1955, Public Law 870, 84th Cong., approved August 1, 1956, Public Law 85–930, 85th Cong., approved September 6, 1958, and Public Law 86–89, 86th Cong., approved July 13, 1959]

To provide for the renegotiation of contracts, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Renegotiation Act of 1951".

TITLE I—RENEGOTIATION OF CONTRACTS

SEC. 101. DECLARATION OF POLICY.

It is hereby recongized and declared that the Congress has made available for the execution of the national defense program extensive funds, by appropriation and otherwise, for the procurement of property, processes, and services, and the construction of facilities necessary for the national defense; that sound execution of the national defense program requires the elimination of excessive profits from contracts made with the United States, and from related subcontracts, in the course of said program; and that the considered policy of the Congress, in the interests of the national defense and the general welfare of the Nation, requires that such excessive profits be eliminated as provided in this title.

SEC. 102. CONTRACTS SUBJECT TO RENEGOTIATION.

(a) In General.—The provisions of this title shall be applicable (1) to all contracts with the Departments specifically named in section 103(a), and related subcontracts, to the extent of the amounts received or accrued by a contractor or subcontractor on or after the first day of January 1951, whether such contracts or subcontracts were made on, before, or after such first day, and (2) to all contracts with the Departments designated by the President under section 103(a), and related subcontracts, to the extent of the amounts received or accrued by a contractor or subcontractor on or after the first day of the first month beginning after the date of such designation, whether such contracts or subcontracts were made on, before, or after such first day.[1]

(b) Performance Prior to July 1, 1950.—Notwithstanding the provisions of subsection (a), the provisions of this title shall not apply to contracts with the Departments, or related subcontracts, to the extent of the amounts received or accrued by a contractor or sub-

[1] Pub. Law 870, 84th Cong., approved August 1, 1956, struck out at this point "; but provisions of this title shall not be applicable to receipts or accruals attributable to performance, under contracts, or subcontracts, after December 31, 1956". The last date was changed from "1953" to "1954" by Pub. Law 764, 83d Cong., approved September 1, 1954, and changed to "1956" by Pub. Law 216, 84th Cong., approved August 3, 1955.

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contractor on or after the 1st day of January 1951, which are attributable to performance, under such contracts or subcontracts, prior to July 1, 1950. This subsection shall have no application in the case of contracts, or related subcontracts, which, but for subsection (c), would be subject to the Renegotiation Act of 1948.

(c) *Termination.*—

(1) In general.—The provisions of this title shall apply only with respect to receipts and accruals, under contracts with the Departments and related subcontracts, which are determined under regulations prescribed by the Board to be reasonably attributable to performance prior to the close of the termination date. Notwithstanding the method of accounting employed by the contractor or subcontractor in keeping his records, receipts or accruals determined to be so attributable, even if received or accrued after the termination date, shall be considered as having been received or accrued not later than the termination date. For the purposes of this title, the term "termination date" means June 30, 1962.

(2) Termination of status as department.—When the status of any agency of the Government as a Department within the meaning of section 103(a) is terminated, the provisions of this title shall apply only with respect to receipts and accruals, under contracts with such agency and related subcontracts, which are determined under regulations prescribed by the Board to be reasonably attributable to performance prior to the close of the status termination date. Notwithstanding the method of accounting employed by the contractor or subcontractor in keeping his records, receipts or accruals determined to be so attributable, even if received or accrued after the status termination date, shall be considered as having been received or accrued not later than the status termination date. For the purposes of this paragraph, the term "status termination date" means, with respect to any agency, the date on which the status of such agency as a Department within the meaning of section 103(a) is terminated.[2]

(d) Renegotiation Act of 1948.—The Renegotiation Act of 1948 shall not be applicable to any contract or subcontract to the extent of the amounts received or accrued by a contractor or subcontractor on or after the 1st day of January 1951, whether such contract or subcontract was made on, before, or after such first day. In the case of a fiscal year beginning in 1950 and ending in 1951, if a contractor or subcontractor has receipts or accruals prior to January 1, 1951, from contracts or subcontracts subject to the Renegotiation Act of 1948, and also has receipts or accruals after December 31, 1950, to which the provisions of this title are applicable, the provisions of this title shall, notwithstanding subsection (a), apply to such receipts and accruals prior to January 1, 1951, if the Board and such contractor or subcontractor agree to such application of this title; and in the case of such an agreement the provisions of the Renegotiation Act of 1948 shall not apply to any of the receipts or accruals for such fiscal year.

(e) Suspension of Certain Profit Limitations.—Notwithstanding any agreement to the contrary, the profit-limitation provisions of the Act of March 27, 1934 (48 Stat. 503, 505), as amended and

[2] Subsection (c) of section 102 was added by Pub. Law 870, 84th Cong., approved August 1, 1956, which also relettered former subsections (c) and (d) as (d) and (e), respectively. By Pub. Law 85-930, 85th Cong. approved September 6, 1958, "June 30, 1959" was substituted in subsection (c)(1) for "December 31, 1958". By Pub. Law 86-89, 86th Cong., approved July 13, 1959, "June 30, 1959" was changed to "June 30, 1962".

supplemented, and of section 505(b) of the Merchant Marine Act, 1936, as amended and supplemented (46 U.S.C. 1155(b)), shall not apply, in the case of such Act of March 27, 1934, to any contract or subcontract if any of the receipts or accruals therefrom are subject to this title *or would be subject to this title except for the provisions of section 106(e)*, and, in the case of the Merchant Marine Act, 1936, to any contract or subcontract entered into after December 31, 1950, if any of the receipts or accruals therefrom are subject to this title *or would be subject to this title except for the provisions of section 106(e)*.[3]

SEC. 103. DEFINITIONS.

For the purposes of this title—

(a) DEPARTMENT.—*The term "Department" means the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, the Maritime Administration, the Federal Maritime Board, the General Services Administration, the National Aeronautics and Space Administration, and the Atomic Energy Commission. Such term also includes any other agency of the Government exercising functions having a direct and immediate connection with the national defense which is designated by the President during a national emergency proclaimed by the President, or declared by the Congress, after the date of the enactment of the Renegotiation Amendments Act of 1956; but such designation shall cease to be in effect on the last day of the month during which such national emergency is terminated.*[4]

(b) SECRETARY.—The term "Secretary" means the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, the Secretary of Commerce (*with respect to the Maritime Administration*), *the Federal Maritime Board*, the Administrator of General Services, the Administrator of the National Aeronautics and Space Administration, the Atomic Energy Commission, and the head of any other agency of the Government which the President shall designate *as a Department* pursuant to subsection (a) of this section.[5]

(c) BOARD.—The term "Board" means the Renegotiation Board created by section 107(a) of this Act.

(d) RENEGOTIATE AND RENEGOTIATION.—The terms "renegotiate" and "renegotiation" include a determination by agreement or order under this title of the amount of any excessive profits.

(e) EXCESSIVE PROFITS.—The term "excessive profits" means the portion of the profits derived from contracts with the Departments

[3] Matter in italics in section 102(e) was added by Pub. Law 216, 84th Cong., approved August 3, 1955, as amended by Pub. Law 870, 84th Cong., approved August 1, 1956, and applies only to the extent of amounts received or accrued after December 31, 1953. Pub. Law 870 changed "section 106(a)(8)" to "section 106(e)" with respect to fiscal years ending after June 30, 1956.

[4] Section 103(a) was amended as shown by Pub. Law 870, 84th Cong., approved August 1, 1956. The amendment, effective December 31, 1956, struck out the Department of Commerce, the Reconstruction Finance Corporation, the Canal Zone Government, the Panama Canal Company, the Housing and Home Finance Agency, and such other agencies of the Government as were designated by the President under the former subsection (a). Federal Civil Defense Administration, National Advisory Committee for Aeronautics, Tennessee Valley Authority, and U.S. Coast Guard were designated by Executive Order 10260, dated June 27, 1951; Defense Materials Procurement Agency, Bureau of Mines, and (United States) Geological Survey by Executive Order 10294, September 28, 1951; Bonneville Power Administration by Executive Order 10299, October 31, 1951; Bureau of Reclamation by Executive Order 10369, June 30, 1952; and Federal Facilities Corporation by Executive Order 10567, September 29, 1954. Section 103(a) was further amended by Pub. Law 85-930, 85th Cong., approved September 6, 1958, which added "the National Aeronautics and Space Administration".

[5] Matter in italics in section 103(b) was added by Pub. Law 870, 84th Cong., approved August 1, 1956, which also changed "the Chairman of the Atomic Energy Commission" to "the Atomic Energy Commission" and struck out the Board of Directors of the Reconstruction Finance Corporation, the Governor of the Canal Zone, the President of the Panama Canal Company, and the Housing and Home Finance Administrator, all effective on December 31, 1956. Pub. Law 85-930, 85th Cong., approved September 6, 1958, added "the Administrator of the National Aeronautics and Space Administration."

and subcontracts which is determined in accordance with this title to be excessive. In determining excessive profits favorable recognition must be given to the efficiency of the contractor or subcontractor, with particular regard to attainment of quantity and quality production, reduction of costs, and economy in the use of materials, facilities, and manpower; and in addition, there shall be taken into consideration the following factors:

(1) Reasonableness of costs and profits, with particular regard to volume of production, normal earnings, and comparison of war and peacetime products;

(2) The net worth, with particular regard to the amount and source of public and private capital employed;

(3) Extent of risk assumed, including the risk incident to reasonable pricing policies;

(4) Nature and extent of contribution to the defense effort, including inventive and developmental contribution and cooperation with the Government and other contractors in supplying technical assistance;

(5) Character of business, including source and nature of materials, complexity of manufacturing technique, character and extent of subcontracting, and rate of turn-over;

(6) Such other factors the consideration of which the public interest and fair and equitable dealing may require, which factors shall be published in the regulations of the Board from time to time as adopted.

(f) PROFITS DERIVED FROM CONTRACTS WITH THE DEPARTMENTS AND SUBCONTRACTS.—The term "profits derived from contracts with the Departments and subcontracts" means the excess of the amount received or accrued under such contracts and subcontracts over the costs paid or incurred with respect thereto and determined to be allocable thereto. All items estimated to be allowed as deductions and exclusions under chapter 1 of the Internal Revenue Code (excluding taxes measured by income) shall, to the extent allocable to such contracts and subcontracts, be allowed as items of cost, except that no amount shall be allowed as an item of cost by reason of the application of a carry-over or carry-back. Notwithstanding any other provision of this section, there shall be allowed as an item of cost in any fiscal year *ending before December 31, 1956*,[6] subject to regulations of the Board, an amount equal to the excess, if any, of costs (computed without the application of this sentence) paid or incurred in the preceding fiscal year with respect to receipts or accruals subject to the provisions of this title over the amount of receipts or accruals subject to the provisions of this title which were received or accrued in such preceding fiscal year, but only to the extent that such excess did not result from gross inefficiency of the contractor or subcontractor. For the purposes of the preceding sentence, the term "preceding fiscal year" does not include any fiscal year ending prior to January 1, 1951. Costs shall be determined in accordance with the method of accounting regularly employed by the contractor or subcontractor in keeping his records, but, if no such method of accounting has been employed, or if the method so employed does not, in the opinion of the Board, or, upon redetermination, in the opinion of The Tax Court of the United

[6] Matter in italics in section 103 (f) was added by Pub. Law 870, 84th Cong., approved August 1, 1956

States, properly reflect such costs, such costs shall be determined in accordance with such method as in the opinion of the Board, or, upon redetermination, in the opinion of The Tax Court of the United States, does properly reflect such costs. In determining the amount of excessive profits to be eliminated, proper adjustment shall be made on account of the taxes measured by income, other than Federal taxes, which are attributable to the portion of the profits which are not excessive.

(g) SUBCONTRACT.—The term "subcontract" means—

(1) any purchase order or agreement (including purchase orders or agreements antedating the related prime contract or higher tier subcontract) to perform all or any part of the work, or to make or furnish any materials, required for the performance of any other contract or subcontract, but such term does not include any purchase order or agreement to furnish office supplies;

(2) any contract or arrangement covering the right to use any patented or secret method, formula, or device for the performance of a contract or subcontract; and

(3) any contract or arrangement (other than a contract or arrangement between two contracting parties, one of whom is found by the Board to be a bona fide executive officer, partner, or full-time employee of the other contracting party) under which—

(A) any amount payable is contingent upon the procurement of a contract or contracts with a Department or of a subcontract or subcontracts; or

(B) any amount payable is determined with reference to the amount of a contract or contracts with a Department or of a subcontract or subcontracts; or

(C) any part of the services performed or to be performed consists of the soliciting, attempting to procure, or procuring a contract or contracts with a Department or a subcontract or subcontracts.

Nothing in this subsection shall be construed (i) to affect in any way the validity or construction of provisions in any contract with a Department or any subcontract, heretofore at any time or hereafter made, prohibiting the payment of contingent fees or commissions; or (ii) to restrict in any way the authority of the Board to determine the nature or amount of selling expense under subcontracts as defined in this subsection, as a proper element of the contract price or as a reimbursable item of cost, under a contract with a Department or a subcontract.

(h) FISCAL YEAR.—The term "fiscal year" means the taxable year of the contractor or subcontractor under chapter 1 of the Internal Revenue Code, except that where any readjustment of interests occurs in a partnership as defined in section 3797(a)(2) of such code, the fiscal year of the partnership or partnerships involved in such readjustment shall be determined in accordance with regulations prescribed by the Board.

(i) RECEIVED OR ACCRUED AND PAID OR INCURRED.—The terms "received or accrued" and "paid or incurred" shall be construed according to the method of accounting employed by the contractor or subcontractor in keeping his records, but if no such method of accounting has been employed, or if the method so employed does not, in the

opinion of the Board, or, upon redetermination, in the opinion of The Tax Court of the United States, properly reflect his receipts or accruals or payments or obligations, such receipts or accruals or such payments or obligations shall be determined in accordance with such method as in the opinion of the Board, or, upon redetermination, in the opinion of The Tax Court of the United States, does properly reflect such receipts or accruals or such payments or obligations.

(j) PERSON.—The term "person" shall include an individual, firm, corporation, association, partnership, and any organized group of persons whether or not incorporated.

(k) MATERIALS.—The term "materials" shall include raw materials, articles, commodities, parts, assemblies, products, machinery, equipment, supplies, components, technical data, processes, and other personal property.

(l) AGENCY OF THE GOVERNMENT.—The term "agency of the Government" means any part of the executive branch of the Government or any independent establishment of the Government or part thereof, including any department (whether or not a Department as defined in subsection (a) of this section), any corporation wholly or partly owned by the United States which is an instrumentality of the United States, or any board, bureau, division, service, office, officer, employee, authority, administration, or other establishment of the Government which is not a part of the legislative or judicial branches.

(m) RENEGOTIATION LOSS CARRYFORWARDS.—

(1) ALLOWANCE.—Notwithstanding any other provision of this section, the renegotiation loss deduction for any fiscal year ending on or after December 31, 1956, shall be allowed as an item of cost in such fiscal year, under regulations of the Board.

(2) DEFINITIONS.—For the purposes of this subsection—

(A) The term "renegotiation loss deduction" means—

(i) for any fiscal year ending on or after December 31, 1956, and before January 1, 1959, the sum of the renegotiation loss carryforwards to such fiscal year from the preceding two fiscal years; and

(ii) for any fiscal year ending after December 31, 1958, the sum of the renegotiation loss carryforwards to such fiscal year from the preceding five fiscal years (excluding any fiscal year ending before December 31, 1956).

(B) The term "renegotiation loss" means, for any fiscal year, the excess, if any, of costs (computed without the application of this subsection and the third sentence of subsection (f)) paid or incurred in such fiscal year with respect to receipts or accruals subject to the provisions of this title over the amount of receipts or accruals subject to the provisions of this title which were received or accrued in such fiscal year, but only to the extent that such excess did not result from gross inefficiency of the contractor or subcontractor.

(3) AMOUNT OF CARRYFORWARDS TO 1956, 1957, AND 1958.—For the purposes of paragraph (2)(A)(i), a renegotiation loss for any fiscal year (hereinafter in this paragraph referred to as the "loss year") shall be a renegotiation loss carryforward to the first fiscal year succeeding the loss year. Such renegotiation loss, after being reduced (but not below zero) by the profits derived from contracts with the Departments and subcontracts in the first fiscal year succeeding the loss year, shall be a renegotiation loss carryforward to

the second fiscal year succeeding the loss year. For the purposes of the preceding sentence, the profits derived from contracts with the Departments and subcontracts in the first fiscal year succeeding the loss year shall be computed as follows:

(A) If such first fiscal year ends on or after December 31, 1956, such profits shall be computed by determining the amount of the renegotiation loss deduction for such first fiscal year without regard to the renegotiation loss for the loss year.

(B) If such first fiscal year ends before December 31, 1956, such profits shall be computed without regard to any renegotiation loss for the loss year or any fiscal year preceding the loss year.

(4) AMOUNT OF CARRYFORWARDS TO FISCAL YEARS ENDING AFTER 1958.—For the purposes of paragraph (2)(A)(ii), a renegotiation loss for any fiscal year (hereinafter in this paragraph referred to as the "loss year") ending on or after December 31, 1956, shall be a renegotiation loss carryforward to each of the five fiscal years following the loss year. The entire amount of such loss shall be carried to the first fiscal year succeeding the loss year. The portion of such loss which shall be carried to each of the other four fiscal years shall be the excess, if any, of the amount of such loss over the sum of the profits derived from contracts with the Departments and subcontracts in each of the prior fiscal years to which such loss may be carried. For the purposes of the preceding sentence, the profits derived from contracts with the Departments and subcontracts in any such prior fiscal year shall be computed by determining the amount of the renegotiation loss deduction without regard to the renegotiation loss for the loss year or for any fiscal year thereafter, and the profits so computed shall not be considered to be less than zero.[7]

SEC. 104. RENEGOTIATION CLAUSE IN CONTRACTS.

Subject to section 106(a) the Secretary of each Department specifically named in section 103(a) shall insert in each contract made by such Department thirty days or more after the date of the enactment of this Act, and the Secretary of each Department designated by the President under section 103(a) shall insert in each contract made by such Department thirty days or more after the date of such designation, a provision under which the contractor agrees—

(1) to the elimination of excessive profits through renegotiation;

(2) that there may be withheld by the United States from amounts otherwise due the contractor, or that he will repay to the United States, if paid to him, any excessive profits;

(3) that he will insert in each subcontract described in section 103(g) a provision under which the subcontractor agrees—

(A) to the elimination of excessive profits through renegotiation;

(B) that there may be withheld by the contractor for the United States from amounts otherwise due to the subcontractor, or that the subcontractor will repay to the United States, if paid to him, any excessive profits;

(C) that the contractor shall be relieved of all liability to the subcontractor on account of any amount so withheld, or so repaid by the subcontractor to the United States;

[7] Section 103(m) was added by Pub. Law 870, 84th Cong., approved August 1, 1956, and was amended by Pub. Law 86-89, 86th Cong., approved July 13, 1959.

(D) that he will insert in each subcontract described in section 103(g) provisions corresponding to those of subparagraphs (A), (B), and (C), and to those of this subparagraph;

(4) that there may be withheld by the United States from amounts otherwise due the contractor, or that he will repay to the United States, as the Secretary may direct, any amounts which under section 105(b)(1)(C) the contractor is directed to withhold from a subcontractor and which are actually unpaid at the time the contractor receives such direction.

The obligations assumed by the contractor or subcontractor under paragraph (1) or (3) (A), as the case may be, agreeing to the elimination of excessive profits through renegotiation shall be binding on him only if the contract or subcontract, as the case may be, is subject to this title. A provision inserted in a contract or subcontract, which recites in substance that the contract or subcontract shall be deemed to contain all the provisions required by this section shall be sufficient compliance with this section. Whether or not the provisions specified in this section are inserted in a contract with a Department or subcontract, to which this title is applicable, such contract or subcontract, as the case may be, shall be considered as having been made subject to this title in the same manner and to the same extent as if such provisions had been inserted.

SEC. 105. RENEGOTIATION PROCEEDINGS.

(a) PROCEEDINGS BEFORE THE BOARD.—Renegotiation proceedings shall be commenced by the mailing of notice to that effect, in such form as may be prescribed by regulation, by registered mail to the contractor or subcontractor. The Board shall endeavor to make an agreement with the contractor or subcontractor with respect to the elimination of excessive profits received or accrued, and with respect to such other matters relating thereto as the Board deems advisable. Any such agreement, if made, may, with the consent of the contractor or subcontractor, also include provisions with respect to the elimination of excessive profits likely to be received or accrued. If the Board does not make an agreement with respect to the elimination of excessive profits received or accrued, it shall issue and enter an order determining the amount, if any, of such excessive profits, and forthwith give notice thereof by registered mail to the contractor or subcontractor. In the absence of the filing of a petition with The Tax Court of the United States under the provisions of and within the time limit prescribed in section 108, such order shall be final and conclusive and shall not be subject to review or redetermination by any court or other agency. The Board shall exercise its powers with respect to the aggregate of the amounts received or accrued during the fiscal year (or such other period as may be fixed by mutual agreement) by a contractor or subcontractor under contracts with the Departments and subcontracts, and not separately with respect to amounts received or accrued under separate contracts with the Departments or subcontracts, except that the Board may exercise such powers separately with respect to amounts received or accrued by the contractor or subcontractor under any one or more separate contracts with the Departments or subcontracts at the request of the contractor or subcontractor. By agreement with any contractor or subcontractor,

and pursuant to regulations promulgated by it, the Board may in its discretion conduct renegotiation on a consolidated basis in order properly to reflect excessive profits of two or more related contractors or subcontractors. Renegotiation shall be conducted on a consolidated basis with a parent and its subsidiary corporations which constitute an affiliated group under section 141 (d) of the Internal Revenue Code if all of the corporations included in such affiliated group request renegotiation on such basis and consent to such regulations as the Board shall prescribe with respect to (1) the determination and elimination of excessive profits of such affiliated group, and (2) the determination of the amount of the excessive profits of such affiliated group allocable, for the purposes of section 3806 of the Internal Revenue Code, to each corporation included in such affiliated group. Whenever the Board makes a determination with respect to the amount of excessive profits, and such determination is made by order, it shall, at the request of the contractor or subcontractor, as the case may be, prepare and furnish such contractor or subcontractor with a statement of such determination, of the facts used as a basis therefor, and of its reasons for such determination. Such statement shall not be used in The Tax Court of the United States as proof of the facts or conclusions stated therein.

(b) METHODS OF ELIMINATING EXCESSIVE PROFITS.—

(1) IN GENERAL.—Upon the making of an agreement, or the entry of an order, under subsection (a) of this section by the Board, or the entry of an order under section 108 by The Tax Court of the United States, determining excessive profits, the Board shall forthwith authorize and direct the Secretaries or any of them to eliminate such excessive profits—

(A) by reductions in the amounts otherwise payable to the contractor under contracts with the Departments, or by other revision of their terms;

(B) by withholding from amounts otherwise due to the contractor any amount of such excessive profits;

(C) by directing any person having a contract with any agency of the Government, or any subcontractor thereunder, to withhold for the account of the United States from any amounts otherwise due from such person or such subcontractor to a contractor, or subcontractor, having excessive profits to be eliminated, and every such person or subcontractor receiving such direction shall withhold and pay over to the United States the amounts so required to be withheld;

(D) by recovery from the contractor or subcontractor, or from any person or subcontractor directed under subparagraph (C) to withhold for the account of the United States, through payment, repayment, credit, or suit any amount of such excessive profits realized by the contractor or subcontractor or directed under subparagraph (C) to be withheld for the account of the United States; or

(E) by any combination of these methods, as is deemed desirable.

(2) INTEREST.—Interest at the rate of 4 per centum per annum shall accrue and be paid on the amount of such excessive profits from the thirtieth day after the date of the order of the Board

or from the date fixed for repayment by the agreement with the contractor or subcontractor to the date of repayment, and on amounts required to be withheld by any person or subcontractor for the account of the United States pursuant to paragraph (1) (C), from the date payment is demanded by the Secretaries or any of them to the date of payment. When The Tax Court of the United States, under section 108, redetermines the amount of excessive profits received or accrued by a contractor or subcontractor, interest at the rate of 4 per centum per annum shall accrue and be paid by such contractor or subcontractor as follows:

(A) When the amount of excessive profits determined by the Tax Court is greater than the amount determined by the Board, interest shall accrue and be paid on the amount determined by the Board from the thirtieth day after the date of the order of the Board to the date of repayment and, in addition thereto, interest shall accrue and be paid on the additional amount determined by the Tax Court from the date of its order determining such excessive profits to the date of repayment.

(B) When the amount of excessive profits determined by the Tax Court is equal to the amount determined by the Board, interest shall accrue and be paid on such amount from the thirtieth day after the date of the order of the Board to the date of repayment.

(C) When the amount of excessive profits determined by the Tax Court is less than the amount determined by the Board, interest shall accrue and be paid on such lesser amount from the thirtieth day after the date of the order of the Board to the date of repayment, except that no interest shall accrue or be payable on such lesser amount if such lesser amount is not in excess of an amount which the contractor or subcontractor tendered in payment prior to the issuance of the order of the Board.

Notwithstanding the provisions of this paragraph, no interest shall accrue after three years from the date of filing a petition with the Tax Court pursuant to section 108 of this title in any case in which there has not been a final determination by the Tax Court with respect to such petition within such three-year period.

(3) SUITS FOR RECOVERY.—Actions on behalf of the United States may be brought in the appropriate courts of the United States to recover, (A) from the contractor or subcontractor, any amount of such excessive profits and accrued interest not withheld or eliminated by some other method under this subsection, and (B) from any person or subcontractor who has been directed under paragraph (1) (C) of this subsection to withhold for the account of the United States, the amounts required to be withheld under such paragraph, together with accrued interest thereon.

(4) SURETIES.—The surety under a contract or subcontract shall not be liable for the repayment of any excessive profits thereon.

(5) ASSIGNEES.—Nothing herein contained shall be construed (A) to authorize any Department or agency of the Government, except to the extent provided in the Assignment of Claims Act of 1940, as now or hereafter amended, to withhold from any assignee

referred to in said Act, any moneys due or to become due, or to recover any moneys paid, to such assignee under any contract with any Department or agency where such moneys have been assigned pursuant to such Act, or (B) to authorize any Department or agency of the Government to direct the withholding pursuant to this Act, or to recover pursuant to this Act, from any bank, trust company or other financing institution (including any Federal lending agency) which is an assignee under any subcontract, any moneys due or to become due or paid to any such assignee under such subcontract.

(6) INDEMNIFICATION.—Each person is hereby indemnified by the United States against all claims on account of amounts withheld by such person pursuant to this subsection from a contractor or subcontractor and paid over to the United States.

(7) TREATMENT OF RECOVERIES.—All money recovered by way of repayment or suit under this subsection shall be covered into the Treasury as miscellaneous receipts. Upon the withholding of any amount of excessive profits or the crediting of any amount of excessive profits against amounts otherwise due a contractor from appropriations from the Treasury, the Secretary shall certify the amount thereof to the Treasury and the appropriations of his Department shall be reduced by an amount equal to the amount so withheld or credited. The amount of such reductions shall be transferred to the surplus fund of the Treasury.

(8) CREDIT FOR TAXES PAID.—In eliminating excessive profits, the Secretary shall allow the contractor or subcontractor credit for Federal income and excess profits taxes as provided in section 3806 of the Internal Revenue Code.

(c) PERIODS OF LIMITATIONS.—*In the absence of fraud or malfeasance or willful misrepresentation of a material fact*, no proceeding to determine the amount of excessive profits for any fiscal year shall be commenced more than one year after *a financial statement* under subsection (e)(1) of this section is filed with the Board with respect to such year, and, *in the absence of fraud or malfeasance or willful misrepresentation of a material fact*, if such proceeding is not commenced prior to the expiration of one year following the date upon which such statement is so filed, all liabilities of the contractor or subcontractor for excessive profits received or accrued during such fiscal year shall thereupon be discharged. If an agreement or order determining the amount of excessive profits is not made within two years following the commencement of the renegotiation proceeding, then, *in the absence of fraud or malfeasance or willful misrepresentation of a material fact*, upon the expiration of such two years all liabilities of the contractor or subcontractor for excessive profits with respect to which such proceeding was commenced shall thereupon be discharged, except that (1) if an order is made within such two years pursuant to a delegation of authority under subsection (d) of section 107, such two-year limitation shall not apply to review of such order by the Board, and (2) such two-year period may be extended by mutual agreement.[8]

(d) AGREEMENTS TO ELIMINATE EXCESSIVE PROFITS.—For the purposes of this title the Board may make final or other agreements with

[8] Matter in italics in section 105 (c) was added by Pub. Law 870, 84th Cong., approved August 1, 1956 The words "a financial statement" were substituted for "the statement required". These amendments apply only with respect to fiscal years ending after June 30, 1956.

a contractor or subcontractor for the elimination of excessive profits and for the discharge of any liability for excessive profits under this title. Such agreements may contain such terms and conditions as the Board deems advisable. Any such agreement shall be conclusive according to its terms; and, except upon a showing of fraud or malfeasance or a willful misrepresentation of a material fact, (1) such agreement shall not for the purposes of this title be reopened as to the matters agreed upon, and shall not be modified by any officer, employee, or agent of the United States, and (2) such agreement and any determination made in accordance therewith shall not be annulled, modified, set aside, or disregarded in any suit, action, or proceeding. Notwithstanding any other provisions of this title, however, the Board shall have the power, pursuant to regulations promulgated by it, to modify any agreement or order for the purpose of extending the time for payment of sums due under such agreement or order, *and shall also have the power to set aside and declare null and void any such agreement if, upon a request made to the Board within three years from the date of such agreement, the Board finds as a fact that the aggregate of the amounts received or accrued by the other party to such agreement during the fiscal year covered by such agreement was not more than the minimum amounts subject to renegotiation specified in section 105 (f) for such fiscal year.*[9]

(e) INFORMATION AVAILABLE TO BOARD.—

(1) FURNISHING OF FINANCIAL STATEMENTS, ETC.—Every person who holds contracts or subcontracts, to which the provisions of this title are applicable, shall, in such form and detail as the Board may by regulations prescribe, file with the Board, on or before the first day of the *fifth* calendar month following the close of his fiscal year, a financial statement setting forth such information as the Board may by regulations prescribe as necessary to carry out this title. *The preceding sentence shall not apply to any such person with respect to a fiscal year if the aggregate of the amounts received or accrued under such contracts and subcontracts during such fiscal year by him, and all persons under control of or controlling or under common control with him, is not more than the applicable amount prescribed in subsection (f) (1) or (2) of this section; but any person to whom this sentence applies may, if he so elects, file with the Board for such fiscal year a financial statement setting forth such information as the Board may by regulations prescribe as necessary to carry out this title. The Board may require any person who holds contracts or subcontracts to which the provisions of this title are applicable (whether or not such person has filed a financial statement under this paragraph) to furnish any information, records, or data which are determined by the Board to be necessary to carry out this title and which the Board specifically requests such person to furnish. Such information, records, or data may not be required with respect to any fiscal year after the date on which all liabilities of such person for excessive profits received or accrued during such fiscal year are discharged. Any person who willfully fails or refuses to furnish any statement, information, records, or data required of him under this subsection, or who knowingly furnishes any statement, information, rec-*

[9] Matter in italics in section 105 (d) was added by Pub. Law 764, 83d Cong., approved September 1, 1954. This amendment is effective as if it were a part of the Renegotiation Act of 1951 on the date of its enactment.

ords, or data pursuant to this subsection containing information which is false or misleading in any material respect, shall, upon conviction thereof, be punished by a fine of not more than $10,000 or imprisonment for not more than one year, or both.[10]

(2) AUDIT OF BOOKS AND RECORDS.—For the purpose of this title, the Board shall have the right to audit the books and records of any contractor or subcontractor subject to this title. In the interest of economy and the avoidance of duplication of inspection and audit, the services of the Bureau of Internal Revenue shall, upon request of the Board and the approval of the Secretary of the Treasury, be made available to the extent determined by the Secretary of the Treasury for the purpose of making examinations and audits under this title.

(f) MINIMUM AMOUNTS SUBJECT TO RENEGOTIATION.—

(1) IN GENERAL.—If the aggregate of the amounts received or accrued during a fiscal year (and on or after the applicable effective date specified in section 102(a)) by a contractor or subcontractor, and all persons under control of or controlling or under common control with the contractor or subcontractor, under contracts with the Departments and subcontracts described in section 103(g) (1) and (2), is not more than $250,000, *in the case of a fiscal year ending before June 30, 1953, or $500,000, in the case of a fiscal year ending on or after June 30, 1953, or $1,000,000, in the case of a fiscal year ending after June 30, 1956,* the receipts or accruals from such contracts and subcontracts shall not, for such fiscal year, be renegotiated under this title. If the aggregate of such amounts received or accrued during the fiscal year under such contracts and subcontracts is more than $250,000, *in the case of a fiscal year ending before June 30, 1953, or $500,000 in the case of a fiscal year ending on or after June 30, 1953, or $1,000,000, in the case of a fiscal year ending after June 30, 1956,* no determination of excessive profits to be eliminated for such year with respect to such contracts and subcontracts shall be in an amount greater than the amount by which such aggregate exceeds $250,000, *in the case of a fiscal year ending before June 30, 1953, or $500,000, in the case of a fiscal year ending on or after June 30, 1953, or $1,000,000, in the case of a fiscal year ending after June 30, 1956.*[11]

(2) SUBCONTRACTS DESCRIBED IN SECTION 103(g)(3).—If the aggregate of the amounts received or accrued during a fiscal year (and on or after the applicable effective date specified in section 102(a)) by a subcontractor, and all persons under control of or controlling or under common control with the subcontractor, under subcontracts described in section 103(g)(3) is not more than $25,000, the receipts or accruals from such subcontracts shall not, for such fiscal year, be renegotiated under this title. If the aggregate of such amounts received or accrued during the fiscal year under such subcontracts is more than $25,000, no determination of excessive profits to be eliminated for such year with

[10] Matter in italics in section 105(e)(1) was added by Pub. Law 870, 84th Cong., approved August 1, 1956, which also struck out the second and third sentences of the former paragraph (1). The word "fifth" was substituted for "fourth" in the first sentence. These amendments apply only with respect to fiscal years ending after June 30, 1956.

[11] Matter in italics in section 105(f)(1) was added by Pub. Law 764, 83d Cong., approved September 1, 1954, as amended by Pub. Law 870, 84th Cong., approved August 1, 1956. The latter amendment added the references to $1,000,000 for fiscal years ending after June 30, 1956.

respect to such subcontracts shall be in an amount greater than the amount by which such aggregate exceeds $25,000.

(3) COMPUTATION.—In computing the aggregate of the amounts received or accrued during any fiscal year for the purposes of *paragraph (1)* of this subsection, there shall be eliminated all amounts received or accrued by a contractor or subcontractor from all persons under control of or controlling or under common control with the contractor or subcontractor and all amounts received or accrued by each such person from such contractor or subcontractor and from each other such person. If the fiscal year is a fractional part of twelve months, the $250,000 amount, *the $500,000 amount, the $1,000,000 amount*, and the $25,000 amount shall be reduced to the same fractional part thereof of the purposes of paragraphs (1) and (2). In the case of a fiscal year beginning in 1950 and ending in 1951, the $250,000 amount and the $25,000 amount shall be reduced to an amount which bears the same ratio to $250,000 or $25,000, as the case may be, as the number of days in such fiscal year after December 31, 1950, bears to 365, but this sentence shall have no application if the contractor or subcontractor has made an agreement with the Board pursuant to section 102(c) for the application of the provisions of this title to receipts or accruals prior to January 1, 1951, during such fiscal year. *In the case of a fiscal year beginning on or before the termination date and ending after the termination date, the $1,000,000 amount and the $25,000 amount shall be reduced to an amount which bears the same ratio of $1,000,000 or $25,000, as the case may be, as the number of days in such fiscal year before the close of the termination date bears to 365.*[12]

SEC. 106. EXEMPTIONS.

(a) MANDATORY EXEMPTIONS.—The provisions of this title shall not apply to—

(1) any contract by a Department with any Territory, possession, or State, or any agency or political subdivision thereof, or with any foreign government or any agency thereof; or

(2) any contract or subcontract for an agricultural commodity in its raw or natural state, or if the commodity is not customarily sold or has not an established market in its raw or natural state, in the first form or state, beyond the raw or natural state, in which it is customarily sold or in which it has an established market. The term "agricultural commodity" as used herein shall include but shall not be limited to—

(A) commodities resulting from the cultivation of the soil such as grains of all kinds, fruits, nuts, vegetables, hay, straw, cotton, tobacco, sugarcane, and sugar beets;

(B) natural resins, saps, and gums of trees;

(C) animals, such as cattle, hogs, poultry, and sheep, fish and other marine life, and the produce of live animals, such as wool, eggs, milk and cream; or

(3) any contract or subcontract for the product of a mine, oil or gas well, or other mineral or natural deposit, or timber, which

[12] Pub. Law 764, 83d Cong., approved September 1, 1954, added "the $500,000 amount" in the second sentence of section 105(f)(3). Pub. Law 870, 84th Cong., approved August 1, 1956, substituted "paragraph (1)" for "paragraphs (1) and (2)" in the first sentence; added "the $1,000,000 amount" in the second sentence; and added the last sentence. The amendment substituting "paragraph (1)" applies only to fiscal years ending on or after June 30, 1956.

has not been processed, refined, or treated beyond the first form or state suitable for industrial use; or

(4) any contract or subcontract with a common carrier for transportation, or with a public utility for gas, electric energy, water, communications, or transportation, when made in either case at rates not in excess of published rates or charges filed with, fixed, approved, or regulated by a public regulatory body, State, Federal, or local, or at rates not in excess of unregulated rates of such a public utility which are substantially as favorably to users and consumers as are regulated rates. In the case of the furnishing or sale of transportation by common carrier by water, this paragraph shall apply only to such furnishing or sale which is subject to the jurisdiction of the Interstate Commerce Commission under Part III of the Interstate Commerce Act or subject to the jurisdiction of the Federal Maritime Board under the Intercoastal Shipping Act, 1933, *and to such furnishing or sale in any case in which the Board finds that the regulatory aspects of rates for such furnishing or sale, or the type and nature of the contract for such furnishing or sale, are such as to indicate, in the opinion of the Board, that excessive profits are improbable; or* [13]

(5) any contract or subcontract with an organization exempt from taxation under section 101 (6) of the Internal Revenue Code, but only if the income from such contract or subcontract is not includible under section 422 of such code in computing the unrelated business net income of such organization; or

(6) any contract which the Board determines does not have a direct and immediate connection with the national defense. The Board shall prescribe regulations designating those classes and types of contracts which shall be exempt under this paragraph; and the Board shall, in accordance with regulations prescribed by it, exempt any individual contract not falling within any such class or type if it determines that such contract does not have a direct and immediate connection with the national defense. *In designating these classes and types of contracts which shall be exempt and in exempting any individual contract under this paragraph, the Board shall consider as not having a direct or immediate connection with national defense any contract for the furnishing of materials or services to be used by the United States, a Department or agency thereof, in the manufacture and sale of synthetic rubbers to a private person or to private persons which are to be used for nondefense purposes. If the use by such private person or persons shall be partly for defense and partly for nondefense purposes, the Board shall consider as not having a direct or immediate connection with national defense that portion of the contract which is determined not to have been used for national defense purposes. The method used in making such determination shall be subject to approval by the Board.* Notwithstanding section 108 of this title, regulations prescribed by the Board under this paragraph, and any determination of the Board that a contract is or is not exempt under this paragraph, shall not be reviewed or redetermined by the Tax Court or by any other court or agency; or [14]

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[13] Matter in italics in section 106 (a) (4) was added by Pub. Law 764, 83d Cong., approved September 1, 1954, and applies only with respect to fiscal years ending on or after December 31, 1953.

[14] Matter in italics in section 106 (a) (6) was added by Pub. Law 764, 83d Cong., approved September 1, 1954. This amendment is effective as if it were a part of the Renegotiation Act of 1951 on the date of its enactment.

(7) any subcontract directly or indirectly under a contract or subcontract to which this title does not apply by reason of *any paragraph, other than paragraph (1), (5), or (8),* of this subsection; *or* [15]

[Applicable to fiscal years ending on or before June 30, 1956. See footnote 16.]

(8) any contract or subcontract for the making or furnishing of a standard commercial article or a standard commercial service, unless the Board makes a specific finding that competitive conditions affecting the sale of such article or such service are such as will not reasonably prevent excessive profits. This paragraph shall apply to any such contract or subcontract only if (1) the contractor or subcontractor files, at such time and in such form and detail as the Board shall by regulations prescribe, such information and data as may be required by the Board under its regulations for the purpose of enabling it to reach a decision with respect to the making of specific finding under this paragraph, and (2) within a period of six months after the date of filing of such information and data, the Board fails to make a specific finding that competitive conditions affecting the sale of such article or such service are such as will not reasonably prevent excessive profits, or (3) within such six-month period, the Board makes a specific finding that competitive conditions affecting the sale of such article or such service are such as will reasonably prevent excessive profits. Any contractor or subcontractor may waive the exemption provided in this paragraph with respect to receipts or accruals in any fiscal year by including a statement to such effect in the financial statement filed by such contractor or subcontractor for such fiscal year pursuant to section 105(e)(1). Any specific finding of the Board under this paragraph shall not be reviewed or redetermined by any court or agency other than by the Tax Court of the United States in a proceeding for a redetermination of the amount of excessive profits determined by an order of the Board. For the purpose of this paragraph—

(A) the term "article" includes any material, part, component, assembly, machinery, equipment, or other personal property;

(B) the term "standard commercial article" means an article—

(1) which, in the normal course of business, is customarily manufactured for stock, and is customarily maintained in stock by the manufacturer or any dealer, distributor, or other commercial agency for the marketing of such article; or

(2) which is manufactured and sold by more than two persons for general civilian industrial or commercial use, or which is identical in every material respect with an article so manufactured and sold;

(C) the term "identical in every material respect" means of the same kind, manufactured of the same or substitute

[15] Matter in italics in section 106 (a) (7) was added by Pub. Law 764, 83d Cong., approved September 1, 1954, as amended by Pub. Law 870, 84th Cong., approved August 1, 1956. The former amendment limited the exclusion to paragraph (8) and applies only to the extent of amounts received or accrued after December 31, 1953. The latter amendment added the references to paragrpahs (1) and (5), and applies only with respect to subcontracts made after June 30, 1956.

materials, and having the same industrial or commercial use or uses, without necessarily being of identical specifications;

(D) the term "service" means any processing or other operation performed by chemical, electrical, physical, or mechanical methods directly on materials owned by another person;

(E) the term "standard commercial service" means a service which is customarily performed by more than two persons for general civilian industrial or commercial requirements, or is reasonably comparable with a service so performed;

(F) the term "reasonably comparable" means of the same or a similar kind, performed with the same or similar materials, and having the same or a similar result, without necessarily involving identical operations; and

(G) the term "persons" does not include any person under control of, or controlling, or under common control with any other person considered for the purposes of subparagraph (B) (2) of this paragraph.[16]

(9) any contract, awarded as a result of competitive bidding, for the construction of any building, structure, improvement, or facility, other than a contract for the construction of housing financed with a mortgage or mortgages insured under the provisions of title VIII of the National Housing Act, as now or hereafter amended.[17]

(b) COST ALLOWANCE.—In the case of a contractor or subcontractor who produces or acquires the product of a mine, oil or gas well, or other mineral or natural deposit, or timber, and processes, refines, or treats such a product to and beyond the first form or state suitable for industrial use, or who produces or acquires an agricultural product and processes, refines, or treats such a product to and beyond the first form or state in which it is customarily sold or in which it has an established market, the Board shall prescribe such regulations as may be necessary to give such contractor or subcontractor a cost allowance substantially equivalent to the amount which would have been realized by such contractor or subcontractor if he had sold such product at such first form or state. Notwithstanding any other provisions of this title, there shall be excluded from consideration in determining whether or not a contractor or subcontractor has received or accrued excessive profits that portion of the profits, derived from receipts and accruals subject to the provisions of this title, attributable to the increment in value of the excess inventory. For the purposes of this subsection the term "excess inventory" means inventory of products, hereinbefore described in this subsection, acquired by the contractor or subcontractor in the form or at the state in which contracts for such products on hand or on contract would be exempted from this title by subsection (a) (2) or (3) of this section, which is in excess of the inventory reasonably necessary to fulfill existing contracts or

[16] Paragraph (8) of section 106 (a) was added by Pub. Law 764, 83d Cong., approved September 1, 1954, as amended by Pub. Law 216, 84th Cong., approved August 3, 1955. The latter amendment added the references to standard commercial services. These amendments apply only to the extent of amounts received or accrued after December 31, 1953. Pub. Law 870, 84th Cong., approved August 1, 1956, struck out paragraph (8) with respect to fiscal years ending after June 30, 1956 and added section 106 (e) with respect to such fiscal years. Therefore, section 106 (a) (8) applies to contracts and subcontracts only to the extent of amounts received or accrued after December 31, 1953, in fiscal years ending on or before June 30, 1956.

[17] Section 106 (9) was added by Pub. Law 216, 84th Cong., approved August 3, 1955, and applies only to contracts with the Departments made after December 31, 1954.

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orders. That portion of the profits, derived from receipts and accruals subject to the provisions of this title, attributable to the increment in value of the excess inventory, and the method of excluding such portion of profits from consideration in determining whether or not the contractor or subcontractor has received or accrued excessive profits, shall be determined in accordance with regulations prescribed by the Board.

(c) PARTIAL MANDATORY EXEMPTION FOR DURABLE PRODUCTIVE EQUIPMENT.—

[Applicable to fiscal years ended before June 30, 1953. See footnote 18]

(1) IN GENERAL.—The provisions of this title shall not apply to receipts or accruals (other than rents) from subcontracts for new durable productive equipment, except to that part of such receipts or accruals which bears the same ratio to the total of such receipts or accruals as five years bears to the average useful life of such equipment as set forth in Bulletin F of the Bureau of Internal Revenue (1942 edition) or, if an average useful life is not so set forth, then as estimated by the Board.

(2) DEFINITIONS.—For the purpose of this subsection—

(A) the term "durable productive equipment" means machinery, tools, or other equipment which does not become a part of an end product acquired by any agency of the Government under a contract with a department, or of an article incorporated therein, and which has an average useful life of more than five years; and

(B) the term "subcontracts for new durable productive equipment" does not include subcontracts where the purchaser of such durable productive equipment has acquired such equipment for the account of the Government, but includes pool orders and similar commitments placed in the first instance by a Department or other agency of the Government when title to the equipment is transferred on delivery thereof or within one year thereafter to a contractor or subcontractor.

[Applicable to fiscal years ending on or after June 30, 1953. See footnote 18]

(1) IN GENERAL.—The provisions of this title shall not apply to receipts or accruals (other than rents) from *contracts or* subcontracts for new durable productive equipment, except (*A*) to that part of such receipts or accruals which bears the same ratio to the total of such receipts or accruals as five years bears to the average useful life of such equipment as set forth in Bulletin F of the Bureau of Internal Revenue (1942 edition) or, if an average useful life is not so set forth, then as estimated by the Board *and* (*B*) *to receipts and accruals from contracts for new durable productive equipment in cases in which the Board finds that the new durable productive equipment covered by such contracts cannot be adapted, converted, or retooled for commercial use.*

(2) DEFINITION.—For the purpose of this subsection, the term "durable productive equipment" means machinery, tools, or other

productive equipment, which has an average useful life of more than five years.[18]

(d) PERMISSIVE EXEMPTIONS.—The Board is authorized, in its discretion, to exempt from some or all of the provisions of this title—

(1) any contract or subcontract to be performed outside of the territorial limits of the continental United States or in Alaska;

(2) any contracts or subcontracts under which, in the opinion of the Board, the profits can be determined with reasonable certainty when the contract price is established, such as certain classes of (A) agreements for personal services or for the purchase of real property, perishable goods, or commodities the minimum price for the sale of which has been fixed by a public regulatory body, (B) leases and license agreements, and (C) agreements where the period of performance under such contract or subcontract will not be in excess of thirty days;

(3) any contract or subcontract or performance thereunder during a specified period or periods if, in the opinion of the Board, the provisions of the contract are otherwise adequate to prevent excessive profits;

(4) any contract or subcontract the renegotiation of which would jeopardize secrecy required in the public interest;

(5) any subcontract or group of subcontracts not otherwise exempt from the provisions of this section, if, in the opinion of the Board, it is not administratively feasible in the case of such subcontract or in the case of such group of subcontracts to determine and segregate the profits attributable to such subcontract or group of subcontracts from the profits attributable to activities not subject to renegotiation.

The Board may so exempt contracts and subcontracts both individually and by general classes or types.

[Applicable to fiscal years ending after June 30, 1956]

(e) *MANDATORY EXEMPTION FOR STANDARD COMMERCIAL ARTICLES AND SERVICES.—*

(1) ARTICLES AND SERVICES.—The provisions of this title shall not apply to amounts received or accrued in a fiscal year under any contract or subcontract for an article or service which (with respect to such fiscal year) is—

(A) a standard commercial article;

(B) an article which is identical in every material respect with a standard commercial article; or

(C) a service which is a standard commercial service or is reasonably comparable with a standard commercial service.

(2) CLASSES OF ARTICLES.—The provisions of this title shall not apply to amounts received or accrued in a fiscal year under any contract or subcontract for an article which (with respect to such fiscal year) is an article in a standard commercial class of articles.

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[18] Matter in italics in paragraph 1 was added by Pub. Law 764, 83d Cong., approved September 1, 1954. Paragraph 2 was amended to read as shown in italics by Pub. Law 764, as amended by Pub. Law 216, 84th Cong., approved August 3, 1955. The latter amendment added "productive" between "other" and "equipment" and struck out "which does not become a part of an end product, or of an article incorporated therein, and" after "other equipment". These amendments apply only with respect to fiscal years ending on or after June 30, 1953.

(3) APPLICATIONS.—Paragraph (1) (B) or (C) and paragraph (2) shall apply to amounts received or accrued in a fiscal year under any contract or subcontract for an article or service only if—

(A) the contractor or subcontractor at his election files, at such time and in such form and detail as the Board shall by regulations prescribe, an application containing such information and data as may be required by the Board under its regulations for the purpose of enabling it to make a determination under the applicable paragraph, and

(B) the Board determines that such article or service is, or fails to determine that such article or service is not, an article or service to which such paragraph applies, within the following periods after the date of filing such application:

(i) in the case of paragraph (1) (B) or (C), three months;

(ii) in the case of paragraph (2), six months; or

(iii) in either case, any longer period stipulated by mutual agreement.

(4) DEFINITIONS.—For the purposes of this subsection—

(A) the term "article" includes any material, part, component, assembly, machinery, equipment, or other personal property;

(B) the term "standard commercial article" means, with respect to any fiscal year, an article—

(i) which either is customarily maintained in stock by the contractor or subcontractor or is offered for sale in accordance with a price schedule regularly maintained by the contractor or subcontractor, and

(ii) from the sales of which by the contractor or subcontractor at least 35 percent of the receipts or accurals in such fiscal year, or of the aggregate receipts or accruals in such fiscal year and the preceding fiscal year, are not (without regard to this subsection and subsection (c) of this section) subject to this title;

(C) an article is, with respect to any fiscal year, "identical in every material respect with a standard commercial article" only if—

(i) such article is of the same kind and manufactured of the same or substitute materials (without necessarily being of identical specifications) as a standard commercial article from sales of which the contractor or subcontractor has receipts or accruals in such fiscal year.

(ii) such article is sold at a price which is reasonably comparable with the price of such standard commercial article, and

(iii) at least 35 percent of the aggregate receipts or accruals in such fiscal year by the contractor or subcontractor from sales of such article and sales of such standard commercial article are not (without regard to this subsection and subsection (c) of this section) subject to this title;

(D) the term "service" means any processing or other operation performed by chemical, electrical, physical, or mechanical methods directly on materials owned by another person;

(E) the term "standard commercial service" means, with respect to any fiscal year, a service from the performance of which by the contractor or subcontractor at least 35 percent of the receipts or accruals in such fiscal year are not (without regard to this subsection) subject to this title;

(F) a service is, with respect to any fiscal year, "reasonably comparable with a standard commercial service" only if—

(i) such service is of the same or a similar kind, performed with the same or similar materials, and has the same or a similar result, without necessarily involving identical operations, as a standard commercial service from the performance of which the contractor or subcontractor has receipts or accruals in such fiscal year, and

(ii) at least 35 percent of the aggregate receipts or accruals in such fiscal year by the contractor or subcontractor from the performance of such service and such standard commercial service are not (without regard to this subsection) subject to this title; and

(G) the term "standard commercial class of articles" means, with respect to any fiscal year, two or more articles with respect to which the following conditions are met:

(i) at least one of such articles either is customarily maintained in stock by the contractor or subcontractor or is offered for sale in accordance with a price schedule regularly maintained by the contractor or subcontractor,

(ii) all of such articles are of the same kind and manufactured of the same or substitute materials (without necessarily being of identical specifications),

(iii) all of such articles are sold at reasonably comparable prices, and

(iv) at least 35 percent of the aggregate receipts or accruals in the fiscal year by the contractor or subcontractor from sales of all of such articles are not (without regard to this subsection and subsection (c) of this section) subject to this title.

(5) WAIVER OF EXEMPTION.—Any contractor or subcontractor may waive the exemption provided in paragraphs (1) and (2) with respect to his receipts or accruals in any fiscal year from sales of any article or service by including a statement to such effect in the financial statement filed by him for such fiscal year pursuant to section 105 (e) (1), without necessarily waiving such exemption with respect to receipts or accruals in such fiscal year from sales of any other article or service. A waiver, if made, shall be unconditional, and no waiver may be made without the permission of the Board for any receipts or accruals with respect to which the contractor or subcontractor has previously filed an application under paragraph (3).

(6) NONAPPLICABILITY DURING NATIONAL EMERGENCIES.—Paragraphs (1) and (2) shall not apply to amounts received or accrued during a national emergency proclaimed by the President, or declared by the Congress, after the date of the enactment of the Renegotiation Amendments Act of 1956.[19]

[19] Section 106(e) was added by Pub. Law 870, 84th Cong., approved August 1, 1956, and applies only with respect to fiscal years ending after June 30, 1956.

SEC. 107. RENEGOTIATION BOARD.

(a) CREATION OF BOARD.—There is hereby created, as an independent establishment in the executive branch of the Government, a Renegotiation Board to be composed of five members to be appointed by the President, by and with the advice and consent of the Senate. The Secretaries of the Army, the Navy, and the Air Force, respectively, subject to the approval of the Secretary of Defense, and the Administrator of General Services shall each recommend to the President, for his consideration, one person from civilian life to serve as a member of the Board. The President shall, at the time of appointment, designate one member to serve as Chairman. The Chairman shall receive compensation at the rate of $17,500 per annum, and the other members shall receive compensation at the rate of $15,000 per annum.[20] No member shall actively engage in any business, vocation, or employment other than as a member of the Board. The Board shall have a seal which shall be judicially noticed.

(b) PLACES OF MEETINGS AND QUORUM.—The principal office of the Board shall be in the District of Columbia, but it or any division thereof may meet and exercise its powers at any other place. The Board may establish such number of offices as it deems necessary to expedite the work of the Board. Three members of the Board shall constitute a quorum, and any power, function, or duty of the Board may be exercised or performed by a majority of the members present if the members present constitute at least a quorum.

(c) PERSONNEL.—*There shall be a General Counsel of the Renegotiation Board who shall be appointed by the Board without regard to the civil-service laws and regulations, and shall receive compensation at the rate of $19,000 per annum.* The Board is authorized, subject to the Classification Act of 1949 *and the civil-service laws and regulations*,[21] to employ and fix the compensation of such officers and employees as it deems necessary to assist it in carrying out its duties under this title. The Board may, with the consent of the head of the agency of the Government concerned, utilize the services of any officers or employees of the United States, and reimburse such agency for the services so utilized. Officers or employees whose services are so utilized shall not receive additional compensation for such services, but shall be allowed and paid necessary travel expenses and a per diem in lieu of subsistence in accordance with the Standardized Government Travel Regulations while away from their homes or official station on duties of the Board.

(d) DELEGATION OF POWERS.—The Board may delegate in whole or in part any function, power, or duty (other than its power to promulgate regulations and rules and other than its power to grant permissive exemptions under section 106 (d)) to any agency of the Government, including any such agency established by the Board, and may authorize the successive redelegation, within limits specified by it, of any such function, power, or duty to any agency of the Government, including any such agency established by the Board. But no function, power, or duty shall be delegated or redelegated to any person

[20] By Federal Executive Pay Act of 1956, Pub. Law 854, 84th Cong., approved July 31, 1956, compensation of Chairman and other members of Board was increased to $20,500 and $20,000, respectively.

[21] First sentence of section 107(c) was added by Pub. Law 86-89, 86th Cong., approved July 13, 1959. Matter in italics in second sentence was substituted by Pub. Law 870, 84th Cong., approved August 1, 1956, for "(but without regard to the civil-service laws and regulations)".

pursuant to this subsection or subsection (f) unless the Board has determined that such person (other than the Secretary of a Department) is responsible directly to the Board or to the person making such delegation or redelegation and is not engaged on behalf of any Department in the making of contracts for the procurement of supplies or services, or in the supervision of such activity; and any delegation or redelegation of any function, power, or duty pursuant to this subsection or subsection (f) shall be revoked by the person making such delegation or redelegation (or by the Board if made by it) if the Board shall at any time thereafter determine that the person (other than the Secretary of a Department) to whom has been delegated or redelegated such function, power, or duty is not responsible directly to the Board or to the person making such delegation or redelegation or is engaged on behalf of any Department in the making of contracts for the procurement of supplies or services, or in the supervision of such activity.

(e) Organization and Operation of Board.—The Chairman of the Board may from time to time divide the Board into division of one or more members, assign the members of the Board thereto, and in case of a division of more than one member, designate the chief thereof. The Board may also, by regulations or otherwise, determine the character of cases to be conducted initially by the Board through an officer or officers of, or utilized by, the Board, the character of cases to be conducted initially by the various agencies of the Government authorized to exercise powers of the Board pursuant to subsection (d) of this section, the character of cases to be conducted initially by the various divisions of the Board, and the character of cases to be conducted initially by the Board itself. The Board may review any determination in any case not initially conducted by it, on its own motion or, in its discretion, at the request of any contractor or subcontractor aggrieved thereby. Unless the Board upon its own motion initiates a review of such determination within ninety days from the date of such determination, or at the request of the contractor or subcontractor made within ninety days from the date of such determination initiates a review of such determination within ninety days from the date of such request, such determination shall be deemed the determination of the Board. If such determination was made by an order with respect to which notice thereof was given by registered mail pursuant to section 105(a), the Board shall give notice by registered mail to the contractor or subcontractor of its decision not to review the case. If the Board reviews any determination in any case not initially conducted by it and does not make an agreement with the contractor or subcontractor with respect to the elimination of excessive profits, it shall issue and enter an order under section 105(a) determining the amount, if any, of excessive profits, and forthwith give notice thereof by registered mail to the contractor or subcontractor. The amount of excessive profits so determined upon review may be less than, equal to, or greater than, that determined by the agency of the Government whose action is so reviewed.

(f) Delegation of Renegotiation Functions to Board.—The Board is hereby authorized and directed to accept and perform such renegotiation powers, duties, and functions as may be delegated to it under any other law requiring or permitting renegotiation, and the

Board is further authorized to redelegate any such power, duty, or function to any agency of the Government and to authorize successive redelegations thereof, within limits specified by the Board. Notwithstanding any other provision of law, the Secretary of Defense is hereby authorized to delegate to the Board, in whole or in part, the powers, functions, and duties conferred upon him by any other renegotiation law.

SEC. 108. REVIEW BY THE TAX COURT

Any contractor or subcontractor aggrieved by an order of the Board determining the amount of excessive profits received or accrued by such contractor or subcontractor may—

(a) if the case was conducted initially by the Board itself—within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the last day) after the mailing under section 105(a) of the notice of such order, or

(b) if the case was not conducted initially by the Board itself—within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the last day) after the mailing under section 107(e) of the notice of the decision of the Board not to review the case or the notice of the order of the Board determining the amount of excessive profits,

file a petition with The Tax Court of the United States for a redetermination thereof. Upon such filing such court shall have exclusive jurisdiction, by order, to finally determine the amount, if any, of such excessive profits received or accrued by the contractor or subcontractor, and such determination shall not be reviewed or redetermined by any court or agency. The court may determine as the amount of excessive profits an amount either less than, equal to, or greater than that determined by the Board. A proceeding before the Tax Court to finally determine the amount, if any, of excessive profits shall not be treated as a proceeding to review the determination of the Board, but shall be treated as a proceeding de novo. For the purposes of this section the court shall have the same powers and duties, insofar as applicable in respect of the contractor, the subcontractor, the Board, and the Secretary, and in respect of the attendance of witnesses and the production of papers, notice of hearings, hearings before divisions, review by the Tax Court of decisions of divisions, stenographic reporting, and reports of proceedings, as such court has under sections 1110, 1111, 1113, 1114, 1115(a), 1116, 1117(a), 1118, 1120, and 1121 of the Internal Revenue Code in the case of a proceeding to redetermine a deficiency. In the case of any witness for the Board, the fees and mileage, and the expenses of taking any deposition shall be paid out of appropriations of the Board available for that purpose, and in the case of any other witnesses shall be paid, subject to rules prescribed by the court, by the party at whose instance the witness appears or the deposition is taken. The filing of a petition under this section shall operate to stay the execution of the order of the Board under subsection (b) of section 105 *only* [22] if within ten days after the filing of the petition the petitioner files with the Tax Court a good and sufficient bond, approved by such court, in such amount as may be fixed by the court. Any amount collected by the United

[22] Matter in italics in section 108 was added by Pub. Law 870, 84th Cong., approved August 1, 1956. This amendment is effective as of the date of the enactment of the Renegotiation Act of 1951.

States under an order of the Board in excess of the amount found to be due under a determination of excessive profits by the Tax Court shall be refunded to the contractor or subcontractor with interest thereon at the rate of 4 per centum per annum from the date of collection by the United States to the date of refund.

SEC. 108A. VENUE OF APPEALS FROM TAX COURT DECISIONS IN RENEGOTIATION CASES.

A decision of the Tax Court of the United States under section 108 of this Act may, to the extent subject to review, be reviewed by—

(1) the United States Court of Appeals for the circuit in which is located the office to which the contractor or subcontractor made his Federal income-tax return for the taxable year which corresponds to the fiscal year with respect to which such decision of the Tax Court was made, or if no such return was made for such taxable year, then by the United States Court of Appeals for the District of Columbia, or

(2) any United States Court of Appeals designated by the Attorney General and the contractor or subcontractor by stipulation in writing.[23]

SEC. 109. RULES AND REGULATIONS.

The Board may make such rules, regulations, and orders as it deems necessary or appropriate to carry out the provisions of this title.

SEC. 110. COMPLIANCE WITH REGULATIONS, ETC.

No person shall be held liable for damages or penalties for any act or failure to act resulting directly or indirectly from his compliance with a rule, regulation, or order issued pursuant to this title, notwithstanding that any such rule, regulation, or order shall thereafter be declared by judicial or other competent authority to be invalid.

SEC. 111. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT.

The functions exercised under this title shall be excluded from the operation of the Administrative Procedure Act (60 Stat. 237) except as to the requirements of section 3 thereof.

SEC. 112. APPROPRIATIONS.

There are hereby authorized to be appropriated such sums as may be necessary and appropriate for the carrying out of the provisions and purposes of this title. Funds made available for the purposes of this title may be allocated or transferred for any of the purposes of this title with the approval of the Bureau of the Budget to any agency of the Government designated to assist in carrying out this title. Funds so allocated or transferred shall remain available for such period as may be specified in the Acts making such funds available.

SEC. 113. PROSECUTION OF CLAIMS AGAINST UNITED STATES BY FORMER PERSONNEL.

Nothing in title 18, United States Code, sections 281 and 283, or in section 190 of the Revised Statutes (U.S.C., title 5, sec. 99) shall be deemed to prevent any person by reason of service in a Department or the Board from acting as counsel, agent, or attorney for prosecuting any claim against the United States: *Provided*, That such person shall not prosecute any claim against the United States (1) involving any subject matter directly connected with which such person was so employed, or (2) during the period such person is engaged in employment in a Department or the Board.[24]

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[23] Section 108A was added by Pub. Law 870, 84th Cong., approved August 1, 1956.

[24] Section 113 was amended by Pub. Law 870, 84th Cong., approved August 1, 1956, by striking out "during the period (or a part thereof) beginning July 1,1950, and ending December 31, 1953," before "from acting".

SEC. 114. REPORTS TO CONGRESS.

The Board shall on or before January 1, 1957, and on or before January 1 of each year thereafter, submit to the Congress a complete report of its activities for the preceding year ending on June 30. Such report shall include—

(1) the number of persons in the employment of the Board during such year, and the places of their employment;

(2) the administrative expenses incurred by the Board during such year;

(3) statistical data relating to filings during such year by contractors and subcontractors, and to the conduct and disposition during such year of proceedings with respect to such filings and filings made during previous years;

(4) an explanation of the principal changes made by the Board during such year in its regulations and operating procedures;

(5) the number of renegotiation cases disposed of by the Tax Court, each United States Court of Appeals, and the Supreme Court during such year, and the number of cases pending in each such court at the close of such year; and

(6) such other information as the Board deems appropriate.[25]

TITLE II—MISCELLANEOUS PROVISIONS

SEC. 201. FUNCTIONS UNDER WORLD WAR II RENEGOTIATION ACT.

(a) ABOLITION OF WAR CONTRACTS PRICE ADJUSTMENT BOARD.—The War Contracts Price Adjustment Board, created by the Renegotiation Act, is hereby abolished.

(b) TRANSFER OF FUNCTIONS IN GENERAL.—All powers, functions, and duties conferred upon the War Contracts Price Adjustment Board by the Renegotiation Act and not otherwise specifically dealt with in this section are transferred to the Renegotiation Board.

(c) AMENDMENT OF THE RENEGOTIATION ACT.—Subsection (a)(4)(D) of the Renegotiation Act is amended by inserting at the end thereof the following: "A net renegotiation rebate shall not be repaid unless a claim therefor has been filed with the Board on or before the date of its abolition, or unless a claim shall have been filed with the Administrator of General Services (i) on or before June 30, 1951,[26] or (ii) within ninety days after the making of an agreement or the entry of an order under subsection (c)(1) determining the amount of excessive profits, whichever is later. A claim shall be deemed to have been filed when received by the Board or the Administrator, whether or not accompanied by a statement of the Commissioner of Internal Revenue showing the amortization deduction allowed for the renegotiated year upon the recomputation made pursuant to section 124(d) of the Internal Revenue Code."

(d) TRANSFER OF CERTAIN FUNCTIONS.—All powers, functions, and duties conferred upon the War Contracts Price Adjustment Board by subsection (a)(4)(D) of the Renegotiation Act, subject to the amendment thereof by subsection (c) of this section, are hereby transferred to the Administrator of General Services.

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[25] Section 114 was added by Pub. Law 870, 84th Cong., approved August 1, 1956.

[26] Subsection (a)(4)(D) of the Renegotiation Act was further amended by Public Law 183, 82d Cong., approved October 20, 1951, which changed "June 30, 1951" to "October 31, 1951," and by Public Law 576, 82d Cong., approved July 17, 1952, which changed "October 31, 1951" to "December 31, 1952."

(e) FUNCTIONS AND RECORDS.—Each Secretary of a Department is authorized and directed to eliminate the excessive profits determined under all existing renegotiation agreements or orders by the methods enumerated in subsection (c)(2) of the Renegotiation Act in respect of all renegotiations conducted by his Department pursuant to delegations from the War Contracts Price Adjustment Board. The several Departments shall retain custody of the renegotiation case files covering renegotiations thus conducted for such time as the Secretary deems necessary for the purposes of this section, and thereafter they shall be made available to the Renegotiation Board for appropriate disposition. The renegotiation records of the War Contracts Price Adjustment Board shall become records of the Renegotiation Board on the effective date of this section.

(f) REFUNDS.—All refunds under subsection (a)(4)(D) of the Renegotiation Act (relating to the recomputation of the amortization deduction), all refunds under the last sentence of subsection (i)(3) of such Act (relating to excess inventories), and all amounts finally adjudged or determined to have been erroneously collected by the United States pursuant to a determination of excessive profits, with interest thereon in the last mentioned case at a rate not to exceed 4 per centum per annum as may be determined by the Administrator of General Services or his duly authorized representative computed to the date of certification to the Treasury Department for payment, shall be certified by the Administrator of General Services or his duly authorized representative to the Treasury Department for payment from such appropriations as may be available therefor: *Provided*, That such refunds shall be based solely on the certificate of the Administrator of General Services or his duly authorized representative.

(g) EXISTING POLICIES, PROCEDURES, ETC., TO REMAIN IN EFFECT.—All policies, procedures, directives, and delegations of authority prescribed or issued (1) by the War Contracts Price Adjustment Board, or (2) by any Secretary or other duly authorized officer of the Government, under the authority of the Renegotiation Act, in effect upon the effective date of this section and not inconsistent herewith, shall remain in full force and effect unless and until superseded, or except as they may be amended, under the authority of this section or any other appropriate authority. All functions, powers, and responsibilities transferred by this section shall be accompanied by the authority to issue appropriate regulations and procedures, or to modify existing procedures, in respect of such powers, functions, and responsibilities.

(h) SAVINGS PROVISION.—This section shall not be construed (1) to prohibit disbursements authorized by the War Contracts Price Adjustment Board and certified pursuant to its authority prior to the effective date of this section, (2) to affect the validity or finality of any agreement or order made or issued pursuant to law by the War Contracts Price Adjustment Board or pursuant to delegations of authority from it, or (3) to prejudice or to abate any action taken or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause; but any court having on its docket a case to which the War Contracts Price Adjustment Board is a party, on motion or supplemental petition filed at any time within *four years* after the effective date of this section, showing a necessity for the

survival of such suit, action, or other proceeding to obtain a determination of the questions involved, may allow the same to be maintained by or against the United States. *If any such case has been dismissed by any court for failure to substitute for the War Contracts Price Adjustment Board prior to the effective date of this sentence, such case is hereby revived and reinstated in such court as if it had not been dismissed.*[27]

(i) RENEGOTIATION ACT NOT REPEALED.—Except as by this Act specifically amended or modified, all provisions of the Renegotiation Act shall remain in full force and effect.

(j) DEFINITIONS.—The terms which are defined in the Renegotiation Act shall, when used in this section, have the same meaning as when used in the Renegotiation Act, except that where a renegotiation function has been transferred by or pursuant to law the terms "Secretary" or "Secretaries" and "Department" or "Departments" shall be understood to refer to the successors in function to those officers or offices specifically named in the Renegotiation Act.

(k) EFFECTIVE DATE OF SECTION.—This section shall take effect sixty days after the date of the enactment of this Act.

SEC. 202. PERIOD OF LIMITATIONS FOR RENEGOTIATION ACT OF 1948.

No proceeding under the Renegotiation Act of 1948 to determine the amount of excessive profits for any fiscal year shall be commenced more than one year after the mandatory statement required by the regulations issued pursuant to such Act is filed with respect to such year, or more than six months after the date of the enactment of this title, whichever is the later, and if such proceeding is not so commenced (in the manner provided by the regulations prescribed pursuant to such Act), all liabilities of the contractor or subcontractor under such Act for excessive profits received or accrued during such fiscal year shall thereupon be discharged. If an agreement or order determining the amount of excessive profits under such Act is not made within two years following the commencement of the renegotiation proceeding, then upon the expiration of such two years all liabilities of the contractor or subcontractor for excessive profits with respect to which such proceeding was commenced shall thereupon be discharged, except that (1) such two-year period may be extended by mutual agreement, and (2) if within such two years such an order is duly issued pursuant to such Act, such two-year limitation shall not apply to the review of such order by any renegotiation board duly authorized to undertake such review.

SEC. 203. AMENDMENT OF SECTION 3806 OF THE INTERNAL REVENUE CODE.

Section 3806(a)(1) of the Internal Revenue Code is hereby amended by striking out subparagraphs (A), (B), and (C) and inserting in lieu thereof the following:

> "(A) The term 'renegotiation' includes any transaction which is a renegotiation within the meaning of the Federal renegotiation act applicable to such transaction, any modification of one or more contracts with the United States or any agency thereof, and any agreement with the United States or any agency thereof in respect of one or more such contracts or subcontracts thereunder.

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[27] Matter in italics in section 201(h) was added by Pub. Law 764, 83d Cong., approved September 1, 1954.

"(B) The term 'excessive profits' includes any amount which constitutes excessive profits within the meaning assigned to such term by the applicable Federal renegotiation act, any part of the contract price of a contract with the United States or any agency thereof, any part of the subcontract price of a subcontract under such a contract, and any profits derived from one or more such contracts or subcontracts.

"(C) The term 'subcontract' includes any purchase order or agreement which is a subcontract within the meaning assigned to such term by the applicable Federal renegotiation act.

"(D) The term 'Federal renegotiation act' includes section 403 of the Sixth Supplemental National Defense Appropriation Act (Public 528, 77th Cong., 2d Sess.), as amended or supplemented, the Renegotiation Act of 1948, as amended or supplemented, and the Renegotiation Act of 1951, as amended or supplemented."

SEC. 204. SEPARABILITY PROVISION.

If any provision of this Act or the application of any provision to any person or circumstance is held invalid, the validity of the remainder of the Act and of the application of its provisions to other persons and circumstances shall not be affected thereby.

Committee studies, sec. 4 of Public Law 86–89, 86th Cong., approved July 13, 1959]

SEC. 4. STUDIES OF PROCUREMENT POLICIES AND PRACTICES AND THE RENEGOTIATION ACT OF 1951.

(a)(1) The Committee on Armed Services of the Senate, or any duly authorized subcommittee thereof, and the Committee on Armed Services of the House of Representatives, or any duly authorized subcommittee thereof, are directed to make full and complete studies of the procurement policies and practices of the Department of Defense, the Department of the Air Force, the Department of the Army, and the Department of the Navy. Such studies shall include an examination of the experience of such Departments in the use of various methods of procurement and types of contractual instruments, with particular regard to the effectiveness thereof in achieving reasonable costs, prices, and profits.

(2) Each committee shall, not later than September 30, 1960, report to its House the results of the study conducted by it pursuant to paragraph (1) of this subsection, together with such recommendations as it deems necessary or desirable. Each committee shall make all material and data collected in the course of the study conducted by it available to the Joint Committee on Internal Revenue Taxation to assist it in making the study required by subsection (b).

(b)(1) The Joint Committee on Internal Revenue Taxation, or any duly authorized subcommittee thereof, is directed to make a full and complete study of the Renegotiation Act of 1951, as amended, and of the policies and practices of the Renegotiation Board.

(2) The Joint Committee shall, not later than March 31, 1961, report to the Senate and the House of Representatives the results of the study conducted pursuant to paragraph (1) of this subsection, together with such recommendations as it deems necessary or desirable.

(3) For the purpose of making the study and report required by paragraph (1) of this subsection, the Joint Committee, and the Chief of Staff of the Joint Committee, may exercise any of the powers conferred upon the Joint Committee and the Chief of Staff of the Joint Committee by sections 8021 and 8023 of the Internal Revenue Code of 1954. The provisions of section 8023(b) of such Code shall apply to requests made under the authority of this paragraph to the same extent as in the case of other requests made under the authority of section 8023(a) of such Code.